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WHERE: Office of the Federal Register
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Presidential Documents

Title 3—

The President

Executive Order 13175 of November 6, 2000

Consultation and Coordination With Indian Tribal Governments

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes; it is hereby ordered as follows:

Section 1. *Definitions.* For purposes of this order:

(a) ''Policies that have tribal implications'' refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

(b) ''Indian tribe'' means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

(c) ''Agency'' means any authority of the United States that is an ''agency'' under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(d) ''Tribal officials'' means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.

Sec. 2. *Fundamental Principles.* In formulating or implementing policies that have tribal implications, agencies shall be guided by the following fundamental principles:

(a) The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.

(b) Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.

(c) The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.

Sec. 3. *Policymaking Criteria.* In addition to adhering to the fundamental principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have tribal implications:

(a) Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

(b) With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.

(c) When undertaking to formulate and implement policies that have tribal implications, agencies shall:

(1) encourage Indian tribes to develop their own policies to achieve program objectives;

(2) where possible, defer to Indian tribes to establish standards; and

(3) in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

Sec. 4. *Special Requirements for Legislative Proposals.* Agencies shall not submit to the Congress legislation that would be inconsistent with the policymaking criteria in Section 3.

Sec. 5. *Consultation.* (a) Each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. Within 30 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency's implementation of this order. Within 60 days of the effective date of this order, the designated official shall submit to the Office of Management and Budget (OMB) a description of the agency's consultation process.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless:

(1) funds necessary to pay the direct costs incurred by the Indian tribal government or the tribe in complying with the regulation are provided by the Federal Government; or

(2) the agency, prior to the formal promulgation of the regulation,

(A) consulted with tribal officials early in the process of developing the proposed regulation;

(B) in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(C) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(c) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications and that preempts tribal law unless the agency, prior to the formal promulgation of the regulation,

(1) consulted with tribal officials early in the process of developing the proposed regulation;

(2) in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the

need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(3) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(d) On issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

Sec. 6. *Increasing Flexibility for Indian Tribal Waivers.*

(a) Agencies shall review the processes under which Indian tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribe for a waiver of statutory or regulatory requirements in connection with any program administered by the agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency, or as otherwise provided by law or regulation. If the application for waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

Sec. 7. *Accountability.*

(a) In transmitting any draft final regulation that has tribal implications to OMB pursuant to Executive Order 12866 of September 30, 1993, each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.

(b) In transmitting proposed legislation that has tribal implications to OMB, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.

(c) Within 180 days after the effective date of this order the Director of OMB and the Assistant to the President for Intergovernmental Affairs shall confer with tribal officials to ensure that this order is being properly and effectively implemented.

Sec. 8. *Independent Agencies.* Independent regulatory agencies are encouraged to comply with the provisions of this order.

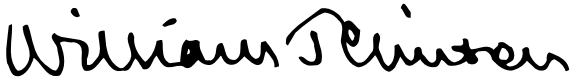
Sec. 9. *General Provisions.* (a) This order shall supplement but not supersede the requirements contained in Executive Order 12866 (Regulatory Planning and Review), Executive Order 12988 (Civil Justice Reform), OMB Circular A–19, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments.

(b) This order shall complement the consultation and waiver provisions in sections 6 and 7 of Executive Order 13132 (Federalism).

(c) Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments) is revoked at the time this order takes effect.

(d) This order shall be effective 60 days after the date of this order.

Sec. 10. *Judicial Review.* This order is intended only to improve the internal management of the executive branch, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person.



THE WHITE HOUSE,
November 6, 2000.

[FR Doc. 00–29003
Filed 11–8–00; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register

Vol. 65, No. 218

Thursday, November 9, 2000

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–29]

Establishment of Class D and Class E4 Airspace; New Bern, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D and Class E4 airspace at New Bern, NC. A Federal Contract Tower is operational at Craven County Regional Airport, NC, and the air traffic controllers are certificated as weather observers. Therefore, the airport meets criteria for Class D surface area airspace and Class E4 airspace designated as an extension to Class D airspace to contain Standard Instrument Approach Procedures (SIAPs) to the airport.

EFFECTIVE DATE: 0901 UTC, January 25, 2001.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On August 29, 2000, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class D and Class E4 airspace at New Bern, NC (65 FR 52375). Class D and Class E4 airspace designations are published in Paragraphs 5000 and 6004 respectively of FAA Order 7400.9H, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR part 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class D and Class E4 airspace at New Bern, NC, Craven County Airport.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

* * * * *

ASO NC D New Bern, NC [New]

Craven County Regional Airport, NC
(Lat. 35°04′23″ N., long. 77°02′35″ W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4-mile radius of the Craven County Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E4 airspace areas designated as an extension to a Class D airspace area

* * * * *

ASO NC E4 New Bern, NC [New]

Craven County Regional Airport, NC
(Lat. 35°04′23″ N., long. 77°02′35″ W.)

New Bern VOR/DME, NC

(Lat. 35°04′23″ N., long. 77°02′42″ W.)

That airspace extending upward from the surface within 2.4 miles each side of the New Bern VOR/DME 038° and 210° radials, extending from the 4-mile radius to 7 miles northeast and southwest of the VOR/DME. This Class E4 airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Director.

* * * * *

Issued in College Park, Georgia, on October 24, 2000.

Richard Biscomb,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–28847 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–33]

Establishment of Class E Airspace; Oak Grove, NC.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Oak Grove, NC. The United States Marine Corps operates a part time control tower at the Marine Corps Outlying Landing Facility (MCOLF) Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is required when the control tower is open to contain instrument approaches at the airport.

EFFECTIVE DATE: 0901 UTC, January 25, 2001.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On August 31, 2000, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace at Oak Grove, NC, (65 FR 52960) to contain instrument approaches at the MCOLF Airport. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9H, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1, dated September 1, 2000. The Class E airspace designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Oak Grove, NC.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO NC E5 Oak Grove, NC [New]

Marine Corps Outlying Landing Facility Airport, NC

(Lat. 35°02′01″ N., long. 77°14′59″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Marine Corps Outlying Landing Facility Airport.

* * * * *

Issued in College Park, Georgia, on October 24, 2000.

Richard Biscomb,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–28849 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–33]

Amendment to Class E Airspace; Albia, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Albia, IA. The FAA has developed Area Navigation (RNAV) Runway (RWY) 31 ORIGINAL, a Standard Instrument Approach Procedure (SIAP) to serve Albia Municipal Airport. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate this SIAP and for other Instrument Flight Rules (IFR) operations at this airport.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing the SIAP and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, March 22, 2001.

Comments for inclusion in the Rules Docket must be received on or before December 27, 2000.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Operations and Airspace Branch, Air Traffic Division, ACE–530, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 00–ACE–33, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

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

SUPPLEMENTARY INFORMATION: The FAA has developed RNAV RWY 31 ORIGINAL, SIAP to serve the Albia Municipal Airport, Albia, IA. The amendment to Class E airspace at Albia, IA, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAP within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules (IFR). The amendment at Albia Municipal Airport, IA, will provide additional controlled airspace for aircraft operating under IFR procedures. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in

paragraph 6005 of FAA Order 7400.9H, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register,** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 00–ACE–33.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

The FAA had determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9H Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Albia, IA [Revised]

Albia Municipal Airport, IA
(Lat 40°59′40″ N., long. 92°45′47″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Albia Municipal Airport.

* * * * *

Issued in Kansas City, MO, on October 31, 2000.

H.J. Lyons, Jr.

Manager, Air Traffic Division, Central Region.

[FR Doc. 00–28846 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–24]

Amendment to Class E Airspace; Washington, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises the Class E airspace at Washington, MO as published in the **Federal Register** August 11, 2000 (65 FR 49192) Airspace Docket No. 00–ACE–24, and corrected in the **Federal Register** (65 FR 52811) Airspace Docket No. 00–ACE–24.

DATES: The direct final rule published at 65 FR 49192 and corrected in 65 FR 52811 is effective on 0901 UTC, November 30, 2000.

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

SUPPLEMENTARY INFORMATION:

History

On August 11, 2000, the FAA published in the **Federal Register** a direct final rule; request for comments which revises the Class E airspace at Washington, MO (65 FR 49192, Airspace Docket No. 00–ACE–24). An error in longitude for the Washington Memorial Airport, MO was corrected in (65 FR 52811, Airspace Docket No. 00–ACE–24). After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require adoption of the rule.

The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the pubic that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on November 30, 2000. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on October 27, 2000.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 00–28845 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–32]

Amendment to Class E Airspace; Bloomfield, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Bloomfield, IA. The FAA has developed Area Navigation (RNAV) Runway (RWY) 36, a Standard Instrument Approach Procedure (SIAP) to serve Bloomfield Municipal Airport. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate this SIAP and for other Instrument Flight Rules (IFR) operations at this airport.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing the SIAP and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, March 22, 2001.

Comments for inclusion in the Rules Docket must be received on or before December 27, 2000.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Operations and Airspace Branch, Air Traffic Division, ACE–530, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 00–ACE–32, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

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

SUPPLEMENTARY INFORMATION: The FAA has developed RNAV RWY 36, SIAP to serve the Bloomfield Municipal Airport, Bloomfield, IA. The amendment to Class E airspace at Bloomfield, IA, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAP within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules (IFR). The amendment at Bloomfield Municipal Airport, IA, will provide additional controlled airspace for aircraft operating under IFR procedures. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9H, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 00–ACE–32.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9H Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Bloomfield, IA [Revised]

Bloomfield Municipal Airport, IA
(Lat 40°43′56″N., long 92°25′42″W.)
Bloomfield NDB
(Lat 40°44′42″N., long 92°25′50″W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Bloomfield Municipal Airport and within 2.6 miles each side of the 176° bearing from the Bloomfield NDB extending from the 6.3-mile radius to 7.4 miles south of the airport.

* * * * *

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

H.J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 00–28844 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AGL–22]

Realignment of Federal Airways; IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the legal descriptions of five Federal airways that align with the Northbrook Very High Frequency Omnidirectional Range/Tactical Air navigation (VORTAC). The FAA is taking this action due to the decommissioning of the Northbrook VORTAC and commissioning of the Northbrook Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) facility. This action also reflects minor changes to the legal descriptions of five Federal airways and also makes editorial corrections to V–217.

EFFECTIVE DATE: 0901 UTC, January 25, 2001.

FOR FURTHER INFORMATION CONTACT: Bil Nelson, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

The Northbrook VOR/DME (formerly a VORTAC) is essential in supporting aircraft operations into, out of and above the Chicago O'Hare, IL, Class B airspace area. In the interest of aviation safety, the FAA decommissioned the VORTAC and commissioned the new VOR/DME facility. On April 4, 2000, the FAA published in the National Flight Data Digest (Issue 070–2) information pertaining to the Northbrook facility. The action was charted effective June 15, 2000, however, as a result of this relocation the legal descriptions of five Federal airways requires amendment.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends the legal descriptions of five Federal airways, V–24, V–97, V–100, V–217, and V–228. These airways align with the Northbrook VOR/DME and have intersections contained in the legal descriptions. These intersections are defined by the Northbrook VOR/DME and are published on the appropriate aeronautical charts. These changes are due to the decommissioning of the Northbrook VORTAC and commissioning of the Northbrook VOR/DME facility located approximately 851 feet south of the VORTAC's prior location.

In addition, this action updates V–217 by amending the spelling of ''Winnepeg'' to ''Winnipeg.'' The FAA is taking this action to manage the navigable airspace and support navigational requirements in the vicinity north of Chicago O'Hare International Airport.

Domestic VOR Federal airways are published in Section 6010(a) of FAA Order 7400.9H dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Federal airways listed in this document will be published subsequently in the order.

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

certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–24 [Revised]

From Aberdeen, SD, via Watertown, SD; Redwood Falls, MN; Rochester, MN; Lone Rock, WI; INT Lone Rock 147° and Janesville, WI, 281° radials; Janesville; INT Janesville 112° and Northbrook, IL, 291° radials; to Northbrook. From Peotone, IL, INT Peotone 152° and Brickyard, IN, 312° radials; to Brickyard.

* * * * *

V–97 [Revised]

From Dolphin, FL; La Belle, FL; St. Petersburg, FL; Seminole, FL; Pecan, GA; Atlanta, GA; INT Atlanta 001° and Volunteer, TN, 197° radials; Volunteer; London, KY; Lexington, KY; Cincinnati, OH; Shelbyville, IN; INT Shelbyville 313° and Boiler, IN, 136° radials; Boiler; Chicago Heights, IL; to INT Chicago Heights 358° and Chicago O'Hare, IL, 127° radials. From INT Northbrook, IL, 291° and Janesville, WI, 112° radials; Janesville; Lone Rock, WI; Nodine, MN; to Gopher, MN. The airspace below 2,000 feet MSL outside the United States is excluded.

* * * * *

V–100 [Revised]

From Medicine Bow, WY; Scottsbluff, NE; Alliance, NE; Ainsworth, NE; O'Neill, NE; Sioux City, IA; Fort Dodge, IA; Waterloo, IA; Dubuque, IA; Rockford, IL; INT Rockford 074° and Janesville, WI, 112° radials; INT Janesville 112° and Northbrook, IL, 291° radials; Northbrook; INT Northbrook 095° and Keeler, MI, 271° radials; Keeler; to Litchfield, MI.

* * * * *

V–217 [Revised]

From INT Chicago O'Hare, IL, 316°/DuPage, IL, 359° and Northbrook, IL, 291° radials; INT Chicago O'Hare, 316° and Badger, WI, 193° radials; Badger; Green Bay, WI; Rhinelander, WI; Duluth, MN; Hibbing, MN; Baudette, MN; INT Baudette 313° and Winnepeg, MB, 117° radials; to Winnepeg. The airspace within Canada is excluded. In addition, the portion of this airway which lies within the Beaver MOA is excluded during the times the Beaver MOA is activated.

* * * * *

V–228 [Revised]

From Stevens Point, via Dells, WI, Madison, WI; INT Madison 138° Chicago O'Hare, IL, 316° radials; INT Chicago O'Hare 316° and Northbrook, IL, 291° radials; Northbrook; INT Northbrook 110° and Gipper, MI, 290° radials; to Gipper.

* * * * *

Issued in Washington, DC, on November 2, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–28731 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Parts 2 and 4

Access Requests From Foreign and Domestic Law Enforcement Agencies

AGENCY: Federal Trade Commission (FTC).

ACTION: Final rule amendments.

SUMMARY: The Federal Trade Commission is amending its Rules of Practice to delegate to the Director of the Bureau of Competition the authority to respond to certain requests made pursuant to agreements under the International Antitrust Enforcement Assistance Act. The Commission is also providing that requests from state agencies may be addressed to an appropriate liaison officer (rather than the General Counsel).

DATES: The amendments are effective on November 2, 2000.

FOR FURTHER INFORMATION CONTACT: Marc Winerman, Attorney, Office of the General Counsel, FTC, 600 Pennsylvania Avenue, NW., Washington, DC 20580, 202–326–2451, mwinerman@ftc.gov.

SUPPLEMENTARY INFORMATION: *Authority to respond to requests for materials made pursuant to agreements under the International Antitrust Enforcement Assistance Act.* The International Antitrust Enforcement Assistance Act (IAEAA), 15 U.S.C. 6201 *et seq.*, authorizes the Commission and the Justice Department to assist foreign antitrust agencies, and anticipates that foreign agencies will assist them in return, pursuant to IAEAA agreements. After making a public interest determination and other determinations set forth in the Act, 15 U.S.C. 6207(a), the agencies can share information already in their files, including, for example, information made confidential by the Federal Trade Commission Act. 15 U.S.C. 6201, 6205.[1] They can also conduct investigations to help an IAEAA requester, during which they can use compulsory process if needed. 15 U.S.C. 6202. The first IAEAA agreement, an agreement with Australia, was signed on April 27, 1999. The Commission has delegated to the Director of the Bureau of Competition the authority to respond to certain requests under this and future IAEAA agreements, in accordance with the IAEAA.

Requests for records (including information within records). Rule 4.11(i), a new provision, delegates to the Director of the Bureau of Competition the authority to respond to requests under IAEAA agreements seeking access to existing Commission records. This includes requests that seek, through discussion or otherwise, information contained in such records. The authority cannot be redelegated, and the delegation is subject to negative option review; before responding to a request, the Bureau Director must give the Commission three days' notice of the intended response and, during that time, any Commissioner may bring the matter to the full Commission.

The Commission has also amended sections 4.10(d) and (e) of its Rules of Practice, which describe materials that the Commission generally cannot make public at all or can make public only after finding the material is not confidential and giving ten days' notice to the submitter. These provisions also describe situations where their general restrictions on disclosure do not apply, including disclosure to IAEAA requesters.[2] The Commission is

[1] Certain materials cannot be shared, however, including premerger filings under the Hart-Scott-Rodino Antitrust Improvements Act. 15 U.S.C. 6204.

[2] While Rule 4.10(e) does not require notice before disclosures to IAEAA requesters, the Commission will consider notice on a case-by-case basis. *See* H. Rep. No. 772, 103d Cong., 2d Sess. 20 (1994).

replacing language in both provisions that simply references the IAEAA with cross-references to new Rule 4.11(i), which both references the IAEAA and delegates to the Bureau Director substantial authority to implement it.

Requests for investigations. The Commission has also amended Rule 2.1, which describes delegations to Commission staff to open investigations. This delegation, as well, is subject to a three-day negative option review by the Commission. Because a Commission resolution is required for process, *see* 15 U.S.C. 57b–1(i), this delegation does not extend to requests that seek such process.

Liaison officers for state access requests. The Commission is also amending Rule 4.11(c), which governs access requests for law enforcement purposes from domestic agencies. The rule formerly provided that requests from federal agencies could be processed by the General Counsel or a designated liaison officer, while requests from state agencies could be processed only by the General Counsel. The rule now provides that appropriate liaison officers can respond to state as well as federal access requests.[3]

Procedural Matters. These amendments are exempt from the notice and comment requirements of the Administrative Procedure Act as ''rules of agency organization, procedure, or practice.'' 5 U.S.C. 553(b)(A). They do not entail information collection for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and are not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b). Nor are they subject to the Small Business Regulatory Enforcement Fairness Act, because that law does not apply to procedural rules that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 803(3)(C).

List of Subjects

16 CFR Part 2

Administrative practice and procedure, Reporting and recordkeeping requirements.

16 CFR Part 4

Administrative practice and procedure, Freedom of information.

Accordingly, the Federal Trade Commission amends title 16, chapter I, subchapter A, of the Code of Federal Regulations as follows:

PART 2—NONADJUDICATIVE PROCEDURES

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

Authority: 15 U.S.C. 46.

2. Amend § 2.1 by adding to the end new sentences to read as follows:

§ 2.1 How initiated.

* * * The Director of the Bureau of Competition has also been delegated, without power of redelegation, authority to open investigations in response to requests pursuant to an agreement under the International Antitrust Enforcement Assistance Act, 15 U.S.C. 6201 *et seq.*, if the requests do not ask the Commission to use process. Before responding to such a request, the Bureau Director shall transmit the proposed response to the Secretary and the Secretary shall notify the Commission of the proposed response. If no Commissioner objects within three days following the Commission's receipt of such notification, the Secretary shall inform the Bureau Director that he or she may proceed.

PART 4—MISCELLANEOUS RULES

3. The authority citation for part 4 continues to read as follows:

Authority: 15 U.S.C. 46, unless otherwise noted.

4. Amend § 4.10 by revising paragraphs (d) and (e) to read as follows:

§ 4.10 Nonpublic material.

* * * * *

(d) Except as provided in paragraphs (f) or (g) of this section or in § 4.11 (b), (c), (d), or (i), no material that is marked or otherwise identified as confidential and that is within the scope of § 4.10(a)(8), and no material within the scope of § 4.10(a)(9) that is not otherwise public, will be made available, without the consent of the person who produced the material, to any individual other than a duly authorized officer or employee of the Commission or a consultant or contractor retained by the Commission who has agreed in writing not to disclose the information. All other Commission records may be made available to a requester under the procedures set forth in § 4.11 or may be disclosed by the Commission except where prohibited by law.

(e) Except as provided in paragraphs (f) or (g) of this section or in § 4.11 (b), (c), (d), or (i), material not within the scope of § 4.10(a)(8) or § 4.10(a)(9) that is received by the Commission and is marked or otherwise identified as confidential may be disclosed only if it is determined that the material is not within the scope of § 4.10(a)(2), and the submitter is provided at least ten days' notice of the intent to disclose the material.

* * * * *

5. Amend § 4.11 by revising paragraph (c) and by adding a new paragraph (i), to read as follows:

§ 4.11 Disclosure requests.

* * * * *

(c) *Requests from Federal and State law enforcement agencies.* Requests from law enforcement agencies of the Federal and State governments for nonpublic records shall be addressed to a liaison officer, where the Commission has appointed such an officer, or if there is none, to the General Counsel. With respect to requests under this paragraph, the General Counsel, the General Counsel's designee, or the appropriate liaison officer is delegated the authority to dispose of them. Alternatively, the General Counsel may refer such requests to the Commission for determination, except that requests must be referred to the Commission for determination where the Bureau having the material sought and the General Counsel do not agree on the disposition. Prior to granting access under this section to any material submitted to the Commission, the General Counsel, the General Counsel's designee, or the liaison officer will obtain from the requester a certification that such information will be maintained in confidence and will be used only for official law enforcement purposes. The certificate will also describe the nature of the law enforcement activity and the anticipated relevance of the information to that activity. A copy of the certificate will be forwarded to the submitter of the information at the time the request is granted unless the agency requests that the submitter not be notified. Requests for material pursuant to compulsory process, or for voluntary testimony, in cases or matters in which the Commission is not a party will be treated in accordance with paragraph (e) of this section.

* * * * *

(i) The Director of the Bureau of Competition is authorized, without power of redelegation, to respond to

[3] For example, the Commission has designated a liaison officer, currently the Associate Director for Planning and Information in the Bureau of Consumer Protection, who can grant access requests from the Commission's partners in the Consumer Sentinel program. That program maintains a database, with information entered by the Commission, by other agencies, and by private entities (who can enter but not retrieve data). The database does not include information subject to prohibitions on disclosure. The Associate Director is the liaison officer to Consumer Sentinel's government participants, who can seek more detailed information through an access request after they learn about an investigation from the database.

access requests for records and other materials pursuant to an agreement under the International Antitrust Enforcement Assistance Act, 15 U.S.C. 6201 *et seq.* Before responding to such a request, the Bureau Director shall transmit the proposed response to the Secretary and the Secretary shall notify the Commission of the proposed response. If no Commissioner objects within three days following the Commission's receipt of such notification, the Secretary shall inform the Bureau Director that he or she may proceed.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–28691 Filed 11–8–00; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR PART 10

[T.D. 00–67]

RIN 1515–AC72

African Growth and Opportunity Act and Generalized System of Preferences

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

ACTION: Interim regulations; corrections.

SUMMARY: This document makes corrections to the document published in the **Federal Register** on October 5, 2000, as T.D. 00–67 which set forth interim amendments to the Customs Regulations primarily to implement the trade benefit provisions for sub-Saharan Africa contained in Title I of the Trade and Development Act of 2000, referred to as the African Growth and Opportunity Act.

DATES: These corrections are effective October 1, 2000; written comments must be submitted by December 4, 2000, in the manner prescribed in T.D. 00–67.

FOR FURTHER INFORMATION CONTACT: Cynthia Reese, Office of Regulations and Rulings (202–927–1361).

SUPPLEMENTARY INFORMATION:

Background

On October 5, 2000, Customs published in the **Federal Register** (65 FR 59668) T.D. 00–67 to set forth interim amendments to the Customs Regulations primarily to implement the trade benefit provisions for sub-Saharan Africa contained in Title I of the Trade and Development Act of 2000. The trade benefits under Title I, also referred to as the African Growth and Opportunity Act (the AGOA), apply to sub-Saharan African countries designated by the President and involve: the extension of duty-free treatment under the Generalized System of Preferences (GSP) to non-textile articles normally excluded from GSP duty-free treatment that are not import-sensitive; and the entry of specific textile and apparel articles free of duty and free of any quantitative limits. Those interim regulatory amendments took effect on October 1, 2000, to coincide with the effective date of the relevant statutory provisions.

This document makes the following corrections to the regulatory texts published in T.D. 00–67:

1. The definition of ''assembled in one or more beneficiary countries'' under § 10.212 includes a parenthetical specification of items (that is, thread, decorative embellishments, buttons, zippers, or similar components) that are not considered to be components for purposes of assembly under the text. However, Customs has reconsidered this matter and now believes that inclusion of this parenthetical limiting language, which is not mandated by the statute, was in error because in some contexts it may be inconsistent with applicable judicial precedent as regards what may be considered a component for assembly purposes. Accordingly, this parenthetical reference should be removed from the text of the definition.

2. The definition of ''beneficiary country'' under § 10.212 refers to a finding ''by the President'' that the country has satisfied the requirements of section 113 of the AGOA. However, that text does not reflect the fact that in Presidential Proclamation 7350 of October 2, 2000 (published in the **Federal Register** at 65 FR 59321 on October 4, 2000), which implemented the AGOA, the authority to make the finding regarding the requirements of section 113 was delegated to the United States Trade Representative. To ensure consistency with this delegation, the text of the definition should include a reference to a ''designee'' of the President.

3. Within § 10.213, paragraph (a)(9) requires some wording changes to conform more closely to the terms of corresponding subheading 9819.11.24 which was added to the HTSUS by the Annex to Presidential Proclamation 7350.

4. Finally, within § 10.213, in paragraph (a)(10), the words ''or his designee'' should be added after ''the President'' to cover any future delegation of authority by the President in this context.

Corrections of Publication

Accordingly, the document published in the **Federal Register** as T.D. 00–67 on October 5, 2000 (65 FR 59668) is corrected as set forth below.

§ 10.212 [Corrected]

1. On page 59676, in the third column, in § 10.212, the definition of ''assembled in one or more beneficiary countries'' is corrected by removing the parenthetical phrase ''(other than thread, decorative embellishments, buttons, zippers, or similar components)''.

2. On page 59676, in the third column, in § 10.212, the definition of ''beneficiary country'' is corrected by adding the words ''or his designee'' after the words ''finding by the President''.

§ 10.213 [Corrected]

3. On page 59677, in the third column, in § 10.213, paragraph (a)(9) is corrected to read:

* * * * *

(a) * * *

(9) Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries from fabrics or yarn that the President or his designee has designated in the **Federal Register** as not available in commercial quantities in the United States;

* * * * *

4. On page 59677, in the third column, in § 10.213, the text of paragraph (a)(10) is corrected by adding the words ''or his designee'' after the words ''the President''.

Dated: November 3, 2000.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–28773 Filed 11–6–00; 4:01 pm]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR PART 10

[T.D. 00–68]

RIN 1515–AC76

United States-Caribbean Basin Trade Partnership Act and Caribbean Basin Initiative

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

ACTION: Interim regulations; corrections.

SUMMARY: This document makes corrections to the document published in the **Federal Register** on October 5, 2000, as T.D. 00–68 which set forth interim amendments to the Customs Regulations primarily to implement the trade benefit provisions for Caribbean Basin countries contained in Title II of the Trade and Development Act of 2000, referred to as the United States-Caribbean Basin Trade Partnership Act.

DATES: These corrections are effective October 1, 2000; written comments must be submitted by December 4, 2000, in the manner prescribed in T.D. 00–68.

FOR FURTHER INFORMATION CONTACT: Cynthia Reese, Office of Regulations and Rulings (202–927–1361).

SUPPLEMENTARY INFORMATION:

Background

On October 5, 2000, Customs published in the **Federal Register** (65 FR 59650) T.D. 00–68 to set forth interim amendments to the Customs Regulations primarily to implement the trade benefit provisions for Caribbean Basin countries contained in Title II of the Trade and Development Act of 2000. The trade benefits under Title II, also referred to as the United States-Caribbean Basin Trade Partnership Act (the CBTPA), apply to Caribbean Basin countries designated by the President and involve the entry of specific textile and apparel articles free of duty and free of any quantitative restrictions, limitations, or consultation levels and the extension of NAFTA duty treatment standards to non-textile articles that are excluded from duty-free treatment under the Caribbean Basin Initiative (CBI) program. Those interim regulatory amendments took effect on October 1, 2000, to coincide with the effective date of the relevant statutory provisions.

This document rectifies some omissions and corrects some other errors published in T.D. 00–68. Two errors were in the preamble portion of the document and involved a misplacement of two numbers regarding the estimated information collection burden under the Paperwork Reduction Act. The remaining corrections set forth in this document involve the following aspects of the interim regulations:

1. The amendatory instruction for the authority citation to Part 10 should have stated that the general authority citation ''is revised'' (rather than ''continues'') to read as follows, because that general authority citation as set forth in T.D. 00–68 includes a change to reflect that General Note 20 of the Harmonized Tariff Schedule of the United States (HTSUS) was redesignated as General Note 22 in the Annex to Presidential Proclamation 7351 of October 2, 2000 (published in the **Federal Register** at 65 FR 59329 on October 4, 2000) which implemented the CBTPA.

2. In the first sentence of § 10.221, the word ''Basin'' was inadvertently omitted from the title of the CBTPA.

3. The definition of ''assembled in one or more CBTPA beneficiary countries'' under § 10.222 includes a parenthetical specification of items (that is, thread, decorative embellishments, buttons, zippers, or similar components) that are not considered to be components for purposes of assembly under the text. However, Customs has reconsidered this matter and now believes that inclusion of this parenthetical limiting language, which is not mandated by the statute, was in error because in some contexts it may be inconsistent with applicable judicial precedent as regards what may be considered a component for assembly purposes. Accordingly, this parenthetical reference should be removed from the text of the definition.

4. The definition of ''CBTPA beneficiary country'' under § 10.222 refers to a beneficiary country designated by the President but does not refer to the additional statutory requirement that the President determine whether a designated beneficiary country has satisfied the requirements of 19 U.S.C. 2703(b)(4)(A)(ii) (the authority for making that determination was delegated to the United States Trade Representative (USTR) in Presidential Proclamation 7351). Since the determination regarding the requirements of 19 U.S.C. 2703(b)(4)(A)(ii) is a necessary condition of eligibility for the CBTPA trade benefits for each beneficiary country and thus operates as a condition precedent to application of the implementing regulations, the definition must be corrected to reflect this additional statutory requirement.

5. Within § 10.223, paragraph (a)(4) requires some wording changes to conform more closely to the terms of corresponding subheading 9820.11.09 which was added to the HTSUS by the Annex to Presidential Proclamation 7351.

6. Within § 10.223, paragraph (a)(8) requires some wording changes to conform more closely to the terms of corresponding subheading 9820.11.27 which was added to the HTSUS by the Annex to Presidential Proclamation 7351.

7. Within § 10.223, in paragraph (a)(9), the words ''or his designee'' should be added after ''the President'' to cover any future delegation of authority by the President in this context.

8. Within § 10.223, the words ''in a CBTPA beneficiary country'' need to be added after the word ''assembled'' in paragraph (a)(11) to reflect the wording of corresponding subheading 9820.11.21 which was added to the HTSUS by the Annex to Presidential Proclamation 7351.

9. Within § 10.223, paragraph (a)(12) describes certain knitted or crocheted apparel articles and was included to reflect the terms of subheading 9820.11.18 which was added to the HTSUS by the Annex to Presidential Proclamation 7351. The word ''wholly'' appears in the regulatory text before the word ''assembled'' but is not included in the text of the HTSUS subheading. In addition, the regulatory text includes, after the words ''assembled in one or more CBTPA beneficiary countries,'' the words ''or the United States'' which do not appear in the HTSUS subheading text. Accordingly, the words ''wholly'' and ''or the United States'' must be removed from the regulatory text to ensure conformity with the HTSUS subheading text.

10. Also with regard to paragraph (a)(12) of § 10.223, appropriate and necessary references to that provision were inadvertently omitted from the following regulatory provisions:

a. In paragraph (b)(1)(i)(A) of § 10.223, which concerns the special rule for foreign findings and trimmings, the sewing thread exception at the end must include a reference to paragraph (a)(12) in addition to the reference to paragraph (a)(3) because both provisions refer to ''thread formed in the United States.''

b. In paragraph (b)(1)(i)(D) of § 10.223, which concerns the *de minimis* rule for fibers and yarns not wholly formed in the United States or in one or more CBTPA beneficiary countries, the exception for elastomeric yarns (which must be wholly formed in the United States) must include a reference to paragraph (a)(12) in addition to the reference to paragraphs (a)(1) through (a)(5) because all of those provisions refer to ''yarns wholly formed in the United States.''

c. In paragraph (b)(2) of § 10.223, which concerns the special rule for nylon filament yarn, reference is made to an article otherwise described under ''paragraph (a)(1), (a)(2) or (a)(3) of this section,'' because those three regulatory provisions correspond to the two statutory provisions (that is, ''clause (i) or (ii)'' of 19 U.S.C. 2703(b)(2)(A)) referred to in the statutory nylon filament yarn provision (that is, 19 U.S.C. 2703(b)(2)(A)(vii)(IV)). It is noted that the nylon filament yarn rule is also reflected in U.S. Note 3(d) to new Subchapter XX of Chapter 98 of the

HTSUS as added by the Annex to Presidential Proclamation 7351. Since that U.S. Note 3(d) also includes a reference to HTSUS subheading 9820.11.18, a reference to paragraph (a)(12) should be added to paragraph (b)(2) of § 10.223.

d. Finally, the second sentence of paragraph (a) of § 10.225, which concerns the filing of claims for preferential treatment, refers to articles described in paragraphs (a)(1) through (a)(11) and thus requires the addition of a reference to paragraph (a)(12) to be complete.

11. In the Textile Certificate of Origin set forth under paragraph (b) of § 10.224, the reference to Caribbean yarn must be removed from block 7 because the statutory and regulatory texts do not mention Caribbean yarn, and the description of preference group D must be corrected to conform more closely to the wording of paragraph (a)(4) of § 10.223 as corrected in this document. The complete Certificate incorporating these corrections is set forth in this document.

12. As in the case of § 10.221 mentioned above, the word ''Basin'' was inadvertently omitted from the title of the CBTPA in the first sentence of § 10.231.

13. Finally, for the same reasons stated above in the case of § 10.222, the definition of ''CBTPA beneficiary country'' under § 10.232 must be corrected to reflect the additional statutory requirement under 19 U.S.C. 2703(b)(4)(A)(ii).

Corrections of Publication

Accordingly, the document published in the **Federal Register** as T.D. 00–68 on October 5, 2000 (65 FR 59650) is corrected as set forth below.

Corrections to the Preamble

1. On page 59657, in the second column, in the second line the number ''440'' is corrected to read ''42'' and in the fourth line the number ''42'' is corrected to read ''440''.

Corrections to the Interim Regulations

2. On page 59657, in the third column, in the amendatory language in instruction paragraph 1, pertaining to the general authority citation for Part 10, the word ''continues'' is corrected to read ''is revised''.

§ 10.221 [Corrected]

3. On page 59658, in the third column, in § 10.221, the first sentence is corrected by adding the word ''Basin'' between the words ''Caribbean'' and ''Trade''.

§ 10.222 [Corrected]

4. On page 59658, in the third column, in § 10.222, the definition of ''assembled in one or more CBTPA beneficiary countries'' is corrected by removing the parenthetical phrase ''(other than thread, decorative embellishments, buttons, zippers, or similar components)''.

5. On page 59658, in the third column, in § 10.222, the definition of ''CBTPA beneficiary country'' is corrected to read:

* * * * *

CBTPA beneficiary country. ''CBTPA beneficiary country'' means a ''beneficiary country'' as defined in § 10.191(b)(1) for purposes of the CBERA which the President also has designated as a beneficiary country for purposes of preferential treatment of textile and apparel articles under 19 U.S.C. 2703(b)(2) and which has been the subject of a finding by the President or his designee, published in the **Federal Register**, that the beneficiary country has satisfied the requirements of 19 U.S.C. 2703(b)(4)(A)(ii).

* * * * *

§ 10.223 [Corrected]

6. On page 59659, in the second column, in § 10.223, paragraph (a)(4) is corrected to read:

* * * * *

(a) * * *

(4) Apparel articles (other than socks provided for in heading 6115 of the HTSUS) knit to shape in a CBTPA beneficiary country from yarns wholly formed in the United States, and knitted or crocheted apparel articles (other than non-underwear t-shirts) cut and wholly assembled in one or more CBTPA beneficiary countries from fabrics formed in one or more CBTPA beneficiary countries or in one or more CBTPA beneficiary countries and the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more CBTPA beneficiary countries);

* * * * *

7. On page 59659, in the third column, in § 10.223, paragraph (a)(8) is corrected to read:

* * * * *

(a) * * *

(8) Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabrics or yarn that the President or his designee has designated in the **Federal Register** as not available in commercial quantities in the United States;

* * * * *

8. On page 59659, in the third column, in § 10.223, the text of paragraph (a)(9) is corrected by adding the words ''or his designee'' after the words ''the President'';

9. On page 59659, in the third column, in § 10.223, the text of paragraph (a)(11) is corrected by adding the words ''in a CBTPA beneficiary country'' after the word ''assembled''.

10. On page 59660, in the first column, in § 10.223, the text of paragraph (a)(12) is corrected by removing the word ''wholly'' before the word ''assembled'' and by removing the words ''or the United States'' after the word ''countries''.

11. On page 59660, in the first column, in § 10.223, the text of paragraph (b)(1)(i)(A) is corrected by adding the reference ''or (a)(12)'' after the reference ''paragraph (a)(3)''.

12. On page 59660, in the second column, in § 10.223, the text of paragraph (b)(1)(i)(D) is corrected by adding the reference ''or (a)(12)'' after the reference ''paragraph (a)(1) through (a)(5)''.

13. On page 59660, in the second column, in § 10.223, the text of paragraph (b)(2) is corrected by removing the reference ''paragraph (a)(1), (a)(2) or (a)(3)'' and adding, in its place, the reference ''paragraph (a)(1), (a)(2), (a)(3) or (a)(12)''.

§ 10.224 [Corrected]

14. On page 59661, in § 10.224, the Textile Certificate of Origin under paragraph (b) is corrected to read:

* * * * *

(b) * * *

BILLING CODE4820–02–P

Caribbean Basin Trade Partnership Act
Textile Certificate of Origin

1. Exporter Name & Address		2. Producer Name & Address
3. Importer Name & Address		6.U.S./Caribbean Fabric Producer Name & Address
4. Description of Article	5. Preference Group	7. U.S. Yarn Producer Name & Address
		8. U.S. Thread Producer Name & Address
		9. Name of Handloomed, Handmade, or Folklore Article
10. Name of Preference Group G Fabric or Yarn:		

Preference Groups:

A: Apparel assembled from U.S.-formed and cut fabric from U.S. yarn [19 CFR 10.223(a)(1)].

B: Apparel assembled and further processed from U.S.-formed and cut fabric from U.S. yarn [19 CFR 10.223(a)(2)].

C: Non-knit apparel cut and assembled from U.S. fabric from U.S. yarn and thread. [19 CFR 10.223(a)(3)].

D: Apparel knit to shape from U.S. yarn and knitted or crocheted apparel cut and assembled from regional or regional and U.S. fabrics from U.S. yarn [19 CFR 10.223(a)(4)].

E: Non-underwear t-shirts made of regional fabric from U.S. yarn [19 CFR 10.223(a)(5)].

F: Brassieres cut and assembled in the United States and/or one or more CBTPA beneficiary countries [19 CFR 10.223(a)(6)].

G: Apparel cut and assembled in one or more CBTPA beneficiary countries from fabrics or yarn not formed in the United States or one or more CBTPA beneficiary countries (as identified in NAFTA) or designated as not available in commercial quantities in the United States [19 CFR 10.223(a)(7) or (a)(8)].

H: Handloomed, handmade, or folklore articles [19 CFR 10.223(a)(9)].

I: Luggage assembled from U.S.-formed and cut fabric from U.S. yarn. [19 CFR 10.223(a)(10)].

J: Luggage cut and assembled from U.S. fabric from U.S. yarn [19 CFR 10.223(a)(11)].

K: Knitted or crocheted apparel cut and assembled from U.S. fabric from U.S. yarn and thread. [19 CFR 10.223(a)(12)].

I certify that the information on this document is complete and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document.

I agree to maintain, and present upon request, documentation necessary to support this certificate.

12. Authorized Signature		13. Company
14. Name (Print or Type)		15. Title
16a.Date(DD/MM/YY)	16b.Blanket Period From: To:	17. Telephone Number Facsimile Number

§ 10.225 [Corrected]

15. On page 59662, in the second column, in § 10.225, the second sentence of paragraph (a) is corrected by removing the reference "§ 10.223(a)(2) through (a)(9) and (a)(11)" and adding, in its place, the reference "§ 10.223(a)(2) through (a)(9), (a)(11) or (a)(12)".

§ 10.231 [Corrected]

16. On page 59663, in the third column, in § 10.231, the first sentence is corrected by adding the word "Basin" between the words "Caribbean" and "Trade".

§ 10.232 [Corrected]

17. On page 59663, in the third column, in § 10.232, the definition of

''CBTPA beneficiary country'' is corrected to read:

* * * * *

CBTPA beneficiary country. ''CBTPA beneficiary country'' means a ''beneficiary country'' as defined in § 10.191(b)(1) for purposes of the CBERA which the President also has designated as a beneficiary country for purposes of preferential duty treatment of articles under 19 U.S.C. 2703(b)(3) and which has been the subject of a finding by the President or his designee, published in the **Federal Register**, that the beneficiary country has satisfied the requirements of 19 U.S.C. 2703(b)(4)(A)(ii).

* * * * *

Dated: November 3, 2000.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–28772 Filed 11–06–00; 4:01 pm]

BILLING CODE 4820–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 07–00–107]

RIN 2115–AE46

Special Local Regulation; Charleston Christmas Parade of Boats, Charleston Harbor, SC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the parade route for the Charleston Christmas Parade of Boats. The change in the parade route is necessary to provide improved viewing for the spectators, to reduce the impact on commercial traffic in Charleston Harbor and to provide for the safety of life on the navigable waters during the event.

DATES: This rule is effective December 11, 2000.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD 07–00–107 and are available for inspection or copying at Commander, Seventh Coast Guard District, 909 S.E. 1st Street, Suite 918, Miami, Florida 33131, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: QMC David Jersey Coast Guard Group Charleston, South Carolina at (843) 724–7600.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing a NPRM is impracticable as we were only recently informed of the change in parade route, and these regulations are needed to provide for the safety of life on navigable waters during the event.

Background and Purpose

Each year a Christmas boat parade is held in Charleston Harbor, South Carolina. We previously issued a permanent special local regulation for this event, at 33 CFR 100.721. Under this regulation the parade route started near the Wando River Terminal, and proceeded south past the Cooper River Bridge, and then around the peninsula and up the Ashley River and ending at City Marina. The parade route is changing this year in order to provide improved viewing for the spectators, to reduce the impact on commercial traffic in Charleston Harbor and to provide for the safety of life on the navigable waters during the event. This year the parade starts in the Middle Ground, a more open area, proceeds generally north west towards Town Creek, and then southerly around the peninsula as in previous years.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This rule is only effective for 4 hours on the day of the parade, and will expire thereafter.

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 rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Charleston Harbor from 4:30 p.m. to 8:30 p.m. on December 9, 2000.

This special local regulation will not have a significant economic impact on a substantial number of small entities for the following reasons. This regulation will only be in effect a total of four hours on the day of the event. Further, the parade route is configured to minimize the impact on commercial traffic and vessel traffic can pass around the parade route.

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. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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(h), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

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

In consideration of the foregoing, the Coast Guard amends 33 CFR Part 100 as follows:

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

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. In § 100.721 revise paragraph (a)(2) to read as follows:

§ 100.721 Charleston Christmas Parade of Boats, Charleston Harbor, SC.

(a) * * *

(2) *Parade Route.* The parade will organize in the Middle Ground, north of Charleston South Channel. The parade will proceed north along the west edge of Commercial Anchorage A, entering Rebellion Reach in the vicinity of Charleston HBR N Chan LB 2 (Light List Number 2505) at approximate position 32°46.3′N, 079°53.3′W, thence proceeding up Folly Shutes, and Horse Reach to approximately two-tenths of a nautical mile north of USS Yorktown at position 32°47.7′N, 079°54.7′W, thence across Hog Island Reach near Charleston Harbor N. Channel LB 11 (Light List Number 2529) at approximate position 32°47.6′N, 079°55.1′W, entering Town Creek Lower reach near Town Creek Chan LB2 (Light List Number 2715) at approximate position 32°47.7′N, 079°55.5′W thence south to 32°45.7′N, 079°55.3′W (approximately one half nautical mile southeast of Battery Point), thence up the Ashley River, and continuing to the finishing point at City Marina (32°46.6′N, 079°57.2′W). All coordinates referenced use datum: NAD 1983.

* * * * *

Dated: October 27, 2000.

G.W. Sutton,

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

[FR Doc. 00–28535 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AJ90

Miscellaneous Montgomery GI Bill Eligibility and Entitlement Issues

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends regulations concerning eligibility for and entitlement to educational assistance under the Montgomery GI Bill—Active Duty (MGIB). The regulations are amended to correctly restate statutory provisions.

DATES: *Effective Date:* This final rule is effective November 9, 2000.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Education Assistant Director for Policy and Program Development (225), Veterans Benefits Administration, Department of Veterans Affairs, (202) 273–7187.

SUPPLEMENTARY INFORMATION: This document makes changes to correctly restate statutory provisions as discussed below.

- Section 21.7020 is corrected to show that VA will consider an initial period of active duty of not more than 12 months that results in a hardship discharge to be continuous with a subsequent period of active duty.
- Section 21.7042 is revised to correct the eligibility criteria an individual must meet if that individual is attempting to establish eligibility for MGIB by serving two years on active duty followed by four years in the Selected Reserve. Such an individual is exempt from serving those four years if he or she was discharged from the Selected Reserve for a condition that interfered with the performance of duty and which was not the result of his or her own willful misconduct. That individual does not have to meet the otherwise applicable deadline for obtaining a high school diploma if he or she was on active duty on August 2, 1990, and completed the requirements for the diploma or the equivalent before October 29, 1994.
- Section 21.7044 is revised to correct the eligibility criteria an individual must meet if he or she was formerly eligible for educational assistance under the Vietnam Era GI Bill. That individual does not have to meet the otherwise applicable deadline for obtaining a high school diploma if he or she was on active duty on August 2, 1990, and completed the requirements for the diploma or the equivalent before October 29, 1994.
- Section 21.7073 is revised to expand the categories of individuals to whom the provisions of the section for deciding on the amount of an individual's entitlement apply. The provisions apply to individuals who between December 1, 1988, and June 30, 1989, withdrew an election not to enroll in MGIB and were discharged from the period of service they were obligated to serve on December 1, 1988, for a condition that interfered with the performance of duty and which was not the result of his or her own willful misconduct.

Nonsubstantive changes also are made for the purpose of clarity.

Changes made by this final rule merely restate statutory language. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule directly affects only individuals and does not directly affect small entities. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final

regulatory flexibility analyses requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance number for the program affected by this final rule is 64.124.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: February 29, 2000.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

Editorial Note: This document was received in the Office of the Federal Register on November 3, 2000.

For the reasons set out in the preamble, 38 CFR part 21, subpart K, is amended as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

1. The authority citation for part 21, subpart K continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, unless otherwise noted.

2. Section 21.7020 is amended by:

A. In paragraph (b)(6)(iv)(A), removing the comma at the end of the paragraph and adding, in its place, a semi-colon.

B. Redesignating paragraphs (b)(6)(iv)(B), (b)(6)(iv)(C), and (b)(6)(iv)(D) as paragraphs (b)(6)(iv)(C), (b)(6)(iv)(D), and (b)(6)(iv)(E), respectively.

C. Adding a new paragraph (b)(6)(iv)(B).

D. In newly redesignated paragraph (b)(6)(iv)(C), removing the comma at the end of the paragraph and adding, in its place, a semi-colon.

E. In newly redesignated paragraph (b)(6)(iv)(D), removing the comma immediately after the word concerned and adding, in its place, a semi-colon.

The addition reads as follows:

§ 21.7020 Definitions.

* * * * *

(b) * * *

(6) * * *

(iv) * * *

(B) For hardship;

* * * * *

3. Section § 21.7042 is amended by:

A. Revising paragraph (b)(2) introductory text.

B. In paragraph (b)(7)(ii)(A), removing ''disability, or'' and adding, in its place, ''disability;''.

C. In paragraph (b)(7)(ii)(B), removing ''connected.'' and adding, in its place, ''connected; or''.

D. Adding paragraph (b)(7)(ii)(C) immediately after paragraph (b)(7)(ii)(B).

E. Adding a new paragraph (b)(10) immediately after the authority citation at the end of paragraph (b)(9).

The revision and additions read as follows:

§ 21.7042 Basic eligibility requirements.

* * * * *

(b) * * *

(2) Except as provided in paragraph (b)(10) of this section, the individual before completing the service requirements of this paragraph must either—

* * * * *

(7) * * *

(ii) * * *

(C) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3012(b)(1)(B)(i))

* * * * *

(10) An individual who does not meet the requirements of paragraph (b)(2) of this section nevertheless is eligible for basic educational assistance if he or she—

(i) Was on active duty on August 2, 1990; and

(ii) Completed the requirements of a secondary school diploma (or an equivalency certificate) before October 29, 1994.

(Authority: 38 U.S.C. 3012)

* * * * *

4. Section § 21.7044 is amended by:

A. Revising paragraph (b)(3) introductory text.

B. Adding paragraph (b)(13) immediately after the authority citation at the end of paragraph (b)(12).

C. In paragraph (c), removing ''paragraph (e)'' and adding, in its place, ''paragraph (d)''.

D. In paragraph (d), removing ''paragraph (d)'' and adding, in its place ''paragraph (c)''.

The revision and addition read as follows:

§ 21.7044 Persons with eligibility under 38 U.S.C. chapter 34.

* * * * *

(b) * * *

(3) Except as provided in paragraph (b)(13) of this section, the individual must either—

* * * * *

(13) An individual who does not meet the requirements of paragraph (b)(3) of this section nevertheless is eligible for basic educational assistance if he or she—

(i) Was on active duty on August 2, 1990; and

(ii) Completed the requirements of a secondary school diploma (or an equivalency certificate) before October 29, 1994.

(Authority: 38 U.S.C. 3012)

* * * * *

5. Section § 21.7073 is amended by:

A. In paragraph (a)(1)(iii), introductory text removing ''to service on'', and adding, in its place, ''to serve on''.

B. Redesignating paragraphs (a)(1)(iii)(B) and (a)(1)(iii)(C) as paragraphs (a)(1)(iii)(C) and (a)(1)(iii)(D), respectively.

C. Adding a new paragraph (a)(1)(iii)(B).

D. Revising the authority citation following newly redesignated paragraph (a)(1)(iii)(D).

The revision and addition read as follows:

§ 21.7073 Entitlement for some individuals who establish eligibility during the open period or who establish eligibility before involuntary separation.

(a) * * *

(1) * * *

(iii) * * *

(B) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

* * * * *

(Authority: 38 U.S.C. 3018(b)(3))

[FR Doc. 00–28702 Filed 11–8–00; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 9

[FRL–6899–7]

OMB Approvals Under the Paperwork Reduction Act; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this technical amendment amends the table that lists the Office of Management and Budget (OMB) control numbers issued under the PRA for ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone.''

EFFECTIVE DATE: This final rule is effective November 9, 2000.

FOR FURTHER INFORMATION CONTACT: William L. Johnson, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–5245; e-mail: johnson.williaml@epa.gov.

SUPPLEMENTARY INFORMATION: The EPA is amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. The amendment updates the table to list those information collection requirements promulgated under the ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,'' which appeared in the **Federal Register** on October 27, 1998 (63 FR 57356). The affected regulations are codified at 40 CFR 51.121 and 51.122. The EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the Agency's regulations, and in each CFR volume containing EPA regulations. The table lists CFR citations with reporting, recordkeeping, or other information collection requirements, and the current OMB control numbers. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

This ICR was previously subject to public notice and comment prior to OMB approval. Due to the technical nature of the table, EPA finds that further notice and comment is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), to amend this table without prior notice and comment.

I. 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. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 13132 (64 FR 43255, August 10, 1999) or Executive Order 13084 (63 FR 27655, May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because 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.*). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the October 27, 1998 **Federal Register** document.

Congressional Review Act

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 November 9, 2000. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

Dated: November 1, 2000.

Oscar Morales,

Director, Collection Strategies Division, Office of Information Collection.

For the reasons set out in the preamble, 40 CFR part 9 is amended as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-1, 300j-2, 300j-3, 300j-4, 300j-9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by adding new entries 51.121 and 51.122 to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control no.
* * * * *	
Requirements for Preparation, Adoption, and Submittal of Implementation Plans	
51.121–51.122	2060–0445
* * * * *	

[FR Doc. 00–28808 Filed 11–8–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6898–8]

RIN 2050–AE01

NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors; Final Rule—Interpretive Clarification; Technical Correction

AGENCY: Environmental Protection Agency (EPA, the Agency).

ACTION: Final rule; Interpretive Clarification and Technical Correction.

SUMMARY: On September 30, 1999 (64 FR 52828), EPA issued a final rule promulgating revised standards for hazardous waste incinerators, hazardous waste burning cement kilns, and hazardous waste burning lightweight aggregate kilns. These standards were promulgated under joint authority of the Clean Air Act (CAA) and Resource Conservation and Recovery Act (RCRA). Sources subject to these standards have raised questions regarding the applicability of new source versus existing source standards for hazardous waste incinerators. In part one of today's rule, we clarify the original intent of our rule on these issues. In part two of today's rule, we make three technical corrections.

DATES: This rule is effective on November 9, 2000.

ADDRESSES: You may view the docket for this rulemaking at the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. You should ask for docket number F–2000–RF3C–FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: For general information or to order paper copies of this **Federal Register** document, contact the RCRA Hotline Monday through Friday between 9 a.m. and 6 p.m. EST, toll free at (800) 424–9346; or (703) 412–9810 from Government phones or if in the Washington, DC local calling area; or (800) 553–7672 for the hearing impaired. For information on this rule contact David Hockey (5302W), Office of Solid Waste, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or at *hockey.david@epa.gov*, or at telephone number 703–308–8846.

SUPPLEMENTARY INFORMATION:

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Part one: Clarifications

I. What Is the Purpose of This Section?

EPA promulgated emission standards for hazardous waste-burning incinerators, lightweight aggregate kilns and cement kilns on September 30, 1999. 64 FR 52828. These standards implement section 112(d) of the Clean Air Act and reflect the performance of the Maximum Available Control Technology (or MACT). The standards themselves are normally called National Emission Standards for Hazardous Air Pollutants (NESHAP).

The Hazardous Waste Combustor (HWC) NESHAP contains two sets of emission standards: One set for existing sources and a second, generally more stringent, set for new sources. Several incinerators subject to this NESHAP have requested clarification as to the applicability of new versus existing source standards in situations when existing incinerators are modified to comply with the emission standards. Specifically, these incinerators have requested clarification on two issues that affect the applicability of new versus existing source standards. First, incinerator commenters want to know if an incinerator's air pollution control device is considered to be part of the ''affected source'' for purposes of this rule. Second, these commenters want to know if the costs of replacement or retrofitting of air pollution control equipment, installed to comply with the HWC NESHAP (incurred between the proposal and source's compliance date), are to be considered as ''reconstruction'' costs in determining if new source standards apply.

After receiving these comments, we further studied the regulatory text and determined that the definitions are either ambiguous or contain (unintended) gaps on several points. In this rule, therefore, we set out our interpretation of these provisions and add clarifying language to the rules to remove ambiguity or gaps and to better express our original intent. We note further, that these interpretations apply to this NESHAP alone and so have no precedential value for interpreting any other NESHAP or any other Clean Air Act regulation.

II. What Is the Scope of the Definition of Hazardous Waste Incinerator?

The HWC MACT standards apply to, among other sources, ''hazardous waste incinerators.'' These are defined at 40 CFR 260.10, as (for purposes relevant here) ''any enclosed device that [u]ses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace.'' This definition does not explicitly address whether air pollution control equipment and other hazardous waste burning equipment, e.g., the waste firing system, is considered to be part of the incinerator.

The relationship of this definition to the question of new source standard applicability is that, as provided in § 63.1206(a)(3), ''if you commenced construction or reconstruction of your hazardous waste combustor after April 19, 1996'', the source is subject to the new source standards. If pollution control equipment is part of the incinerator, then an incinerator that began retrofitting pollution control equipment before April 19, 1996 ordinarily would not be subject to the new source standards. Conversely, if only the combustion chamber is considered to be the source, then only changes to the combustion chamber begun before April 19, 1996 would be relevant in assessing new source standard applicability.

As described by commenters, the definition of an incinerator at 40 CFR 260.10 is unclear with regard to whether the ''enclosed device'' includes the air pollution control device (APCD). In one instance, the enclosed device can be interpreted to include only the burn chamber, typically either a box or cylindrical configuration, into which waste is fed and burned using controlled flame combustion. However, the definition also can be read to include not only the burn chamber, but also to include other parts of the device through which combustion off-gases, that can contain significant concentrations of hazardous air

pollutants (HAPs), flow prior to release to the environment. These APCDs, of course, are also enclosed and so are part of the device preventing release of HAPs until the end of the combustion process. These gases continue to be regulated, as is the APCD itself.

In promulgating the HWC NESHAP rule, we intended that the incinerator source include not only the combustion chamber, but also the waste firing system and the APCD. The commercial purpose of an HWC is the safe treatment (destruction) of hazardous organic pollutants. In order to provide safe treatment, other HAPs may require capture, additional treatment, and disposal. For hazardous waste incinerators, we regulate, through specific operating conditions and monitoring requirements, all aspects of the source that may affect emissions of HAPs from the burning of hazardous wastes. See 64 FR at 53055—53062. Because the APCD affects emissions of HAPs, e.g., dioxin/furan formation, toxic metals capture, acid gas removal, we consider the APCD integral to the treatment process, and, therefore, to the source as a whole. For example, when describing the applicability of requirements in response to comments, we say that requirements apply to ''* * * all components of the combustor, including associated pollution control equipment.'' US EPA, *Response to Comments Background Document, Volume II:* Compliance, PM Control (PMCOMP.WPD), page 6.

We acknowledge that this intent should have been expressed in the definition of an incinerator. Therefore, we make our intent explicit by adding the following clarification to the rule: To the definition of a hazardous waste incinerator in § 63.1201(a) we add the following sentence: ''For purposes of this subpart, the hazardous waste incinerator includes all associated firing systems and air pollution control devices, as well as the combustion chamber equipment.''

Most importantly, this interpretation maintains the status quo in defining new source incinerators. In implementing the RCRA subtitle C rules, we included air pollution controls as part of the incinerator. This is important in that section 112(n)(7) of the CAA calls for integration of the standards under both RCRA and CAA programs to the extent practicable (consistent with the requirements of section 112). In this case, it is ''practicable,'' in the words of section 112(n)(7), to carry over this RCRA practice into implementation of the MACT standard. We are therefore doing so here. However, we note that due to this need to link with the RCRA subtitle C program, this action creates no precedent for any other CAA source category.

III. Clarification of ''Reconstructed Sources''

Section 63.1206(a)(3), as promulgated, states that ''if you commenced construction or reconstruction of your hazardous waste combustor after April 19, 1996, you must comply with (the new source standards).'' ''Reconstruction,'' in turn, is defined in the General Provisions (in relevant part) as ''the replacement of components of an affected * * * source to such an extent that the fixed capital cost of the new components exceeds 50 percent of the fixed capital costs that would be required to construct a comparable new source.'' Section 63.2 (definition of ''reconstruction''). In adopting § 63.1206(a)(3), we intended that the cost of retrofitting and replacement of air pollution control devices installed to comply with the MACT standard is not to be considered as a cost of reconstruction. As shown below, this principle has long been codified in the RCRA subtitle C rules. We also stated in the administrative record to the 1999 HWC MACT rule that we meant for the same principle to apply here.

The RCRA subtitle C rules have long included the same cost test for determining when reconstruction occurs as is found in the General Provisions. In 40 CFR 270.72(b) we use the definition of reconstruction in a context directly analogous to whether new source status is triggered. This section defines when changes to an interim status RCRA facility are so extensive as to amount to reconstruction, causing a source to be subject to the more stringent standards for fully permitted facilities. The rules state, however, that this reconstruction cost test does not apply to units that are added due to the need to comply with a new RCRA rule. Section 270.72(b)(7). We initially proposed this principle for boilers and industrial furnaces burning hazardous waste (see 52 FR at 17013 (May 6, 1987)), but later codified the policy for all RCRA facilities in order that the principle—new units added to meet new regulations are not to be considered in applying the reconstruction cost test—apply generally. 56 FR at 7186 (Feb. 21, 1991). In addition, the RCRA rules (as amended in a 1998 rulemaking) further state that ''changes necessary to comply with standards under 40 CFR Part 63 subpart EEE (the hazardous waste combustor MACT standards)'' are not to be considered as reconstruction costs for purposes of RCRA. Section 270.72(b). This provision was added specifically to ensure that the costs of coming into compliance with the MACT standards incurred by hazardous waste combustion sources were not to be considered in applying the reconstruction cost test. 63 FR at 33805 (June 19, 1998).

With these existing rules establishing our approach, we intended to apply the same principle in determining which costs were to be included within the reconstruction cost test used for determining applicability of new source standards for hazardous waste combustors. We also reiterated that these costs would not be considered as reconstruction costs in the RCRA context, emphasizing that this approach avoided any potential conflict between the CAA and RCRA regimes (implying that the principle regarding reconstruction costs was meant to apply in both contexts). US EPA, *Response to Comments Background Document, Vol. 1: Miscellaneous Standards,* pp. 56–7.

To clarify our intent, today we add the following sentence to the end of § 63.1206(a)(3) New or reconstructed sources: ''The costs of retrofitting and replacement of equipment that is installed specifically to comply with this subpart, between April 19, 1996 and a source's compliance date, are not considered to be reconstruction costs.''

As with the definition of affected source, this clarifying change regarding the reconstruction test, is needed to further the purpose of section 112(n)(7) of the CAA. This section calls for integration of the standards under both CAA and RCRA programs to the extent practicable (consistent with the requirements of section 112). Here, as just explained, longstanding RCRA practice is not to include costs of new units needed to comply with new regulatory standards as reconstruction costs. It is ''practicable '' (section 112(n)(7)) to carry this administrative principle over into the CAA regime for RCRA sources. As with the definition of affected source, this action is therefore not precedential for any non-RCRA source category.

Part Two: Technical Corrections

I. What Is the Purpose of This Section?

This final rule also makes three technical corrections to the Hazardous Waste Combustor NESHAPS promulgated on September 30, 1999 (64 FR 52828). First, if you use data in lieu of your initial comprehensive performance test, you must commence a comprehensive performance test within five years of the commencement date of the test from which the data were

obtained. Second, you are required to submit your continuous monitoring system (CMS) evaluation test plan rather than the evaluation plan for review and approval. Third, if you comply with the standards early, you begin calculating continuous monitoring system rolling averages at the time you elect to begin complying with the standards.

II. The Deadline for Conducting the Subsequent Comprehensive Performance Test After Using Data in Lieu of the Initial Performance Test Is Corrected

Section 63.1207(d)(1) inadvertently requires you to commence the subsequent comprehensive performance test within 61 months of the date six months after the compliance date if you submit data in lieu of the initial comprehensive performance test. This is incorrect. As discussed in the preamble (see 64 FR at 52917–18), your subsequent comprehensive performance test must commence within five years of the commencement date of the test from which you are using data in lieu of the initial comprehensive performance test. For example, if you commence an emissions test on September 30 2001, one year prior to the compliance date, and the results of that test can be used in lieu of the initial comprehensive performance test to demonstrate compliance with Subpart EEE, you must commence your subsequent comprehensive performance test within five years of that date, September 30, 2006.

For the reasons discussed above, we revise § 63.1207(d)(1) to make it consistent with the preamble.

III. The Confusion Between Continuous Monitoring System Evaluation Plan and Evaluation Test Plan is Corrected

Sections 63.1207(e)(1) and (e)(2) inadvertently require you to submit a continuous monitoring system (CMS) evaluation plan for review and approval at least one year prior to the scheduled date of the CMS performance evaluation. What we actually intended was to require you to submit the CMS evaluation test plan, for review and approval. The CMS evaluation test plan describes the actual testing necessary to demonstrate calibration, minimization of malfunctions, and how the CMS will meet the required performance specifications.

The CMS evaluation plan implements your CMS quality control program and specifies how a source will maintain calibration of the CMS and minimize malfunctions. As required by Subpart EEE, you must keep the CMS evaluation plan on record for the life of the source and make the plan available for inspection upon request by the Administrator. As we correct in today's notice you need not submit the CMS evaluation plan for review and approval.

We revise §§ 63.1207(e)(1) and (e)(2) accordingly.

IV. Procedures to Begin Calculating Continuous Monitoring System Rolling Averages Is Corrected for Sources That Comply Early

The September 30, 1999 Final Rule requires you to begin recording one-minute continuous emission monitor (CEM) and continuous monitoring system (CMS) values by 12:01 a.m., hourly rolling average values by 1:01 a.m., and twelve hour rolling averages by 12:01 p.m.. See §§ 63.1209(a)(6)(i) and (b)(5)(i). Although not explicitly written, we intended this provision to apply to you on the regulatory compliance date (i.e., three years after Final Rule promulgation). We have since determined that there could be situations where you would choose to voluntarily comply with the MACT standards before the compliance date. In such situations, the requirement for you to begin calculating one-minute averages, hourly rolling averages, and 12-hour rolling averages by 12:01 a.m., 1:01 a.m., and 12:01 p.m., respectively, is inappropriate.

Today we are correcting the regulatory language in §§ 63.1209(a)(6)(i) and (b)(5)(i) in order to clarify that: (1) The requirement to begin calculating one-minute averages, hourly rolling averages, and 12-hour rolling averages by 12:01 a.m., 1:01 a.m., and 12:01 p.m., respectively, applies only to sources that begin complying with the MACT standards on the regulatory compliance date; and, (2) if you elect to comply early with the MACT standards, you must simply begin recording CEM and CMS rolling averages at the time at which you elect to begin complying with the MACT standards. We believe this correction is prudent because of our desire to promote the concept of early compliance.

Part Three: 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.[1] EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because it merely clarifies certain requirements and provides technical corrections (corrects errors) to the Hazardous Waste Combustors NESHAP Final Rule (64 FR 52828, September 30, 1999). The final rule was subject to notice and comment, and the clarified regulatory language reflects the Agency's views already set out during the rulemaking and in past Agency practice. Thus, notice and public procedure for this action are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

Part Four: How Is the Program Delegated Under the Clean Air Act?

States can implement and enforce the new MACT standards through their delegated 112(l) CAA program and/or by having title V authority. A State's title V authority is independent of whether it has been delegated section 112(l) of the CAA. Additional information on state authority under the CAA may be found in the HWC MACT rule (64 FR 52991).

Part Five: Analytic and Regulatory 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 (see Part Three: Good Cause Exemption), 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

[1] The good cause exemption in 5 U.S.C. 553 (b) applies here, even though this is a rulemaking otherwise subject to the procedural standards set out in section 307 (d) of the Clean Air Act. See CAA section 307 (d) (1) (final sentence).

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 interpretive clarification and 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** notice.

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 therefore, and established an effective date of November 9, 2000. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

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

Dated: October 31, 2000.

Michael Shapiro,

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

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

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

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

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

2. Section 63.1201 is amended by revising the definition of ''Hazardous waste incinerator'' in paragraph (a) to read as follows:

§ 63.1201 Definitions and acronyms used in this subpart.

(a) * * *

Hazardous waste incinerator means a device defined as an incinerator in § 260.10 of this chapter and that burns hazardous waste at any time. For purposes of this subpart, the hazardous waste incinerator includes all associated firing systems and air pollution control devices, as well as the combustion chamber equipment.

* * * * *

3. Section 63.1206 is amended by revising paragraph (a)(3)(i) to read as follows:

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

(a) * * *

(3) * * *

(i) If you commenced construction or reconstruction of your hazardous waste combustor after April 19, 1996, you must comply with this subpart by the later of September 30, 1999 or the date the source starts operations, except as provided by paragraph (a)(3)(ii) of this section. The costs of retrofitting and replacement of equipment that is installed specifically to comply with this subpart, between April 19, 1996 and a source's compliance date, are not considered to be reconstruction costs.

* * * * *

4. Section 63.1207 amended by revising paragraphs (d)(1), (e)(1)(i) introductory text, (e)(1)(i)(A), (e)(1)(ii), and (e)(2) to read as follows:

§ 63.1207 What are the performance testing requirements?

* * * * *

(d) * * *

(1) *Comprehensive performance testing.* You must commence testing no later than 61 months after the date of commencing the previous comprehensive performance test. If you submit data in lieu of the initial performance test, you must commence the subsequent comprehensive performance test within 61 months of commencing the test used to provide the data in lieu of the initial performance test.

* * * * *

(e) * * *

(1) * * *

(i) *Comprehensive performance test.* You must submit to the Administrator a notification of your intention to conduct a comprehensive performance test and CMS performance evaluation and a site-specific test plan and CMS performance evaluation test plan at least one year before the performance test and performance evaluation are scheduled to begin.

(A) The Administrator will notify you of approval or intent to deny approval of the site-specific test plan and CMS performance evaluation test plan within 9 months after receipt of the original plan.

* * * * *

(ii) *Confirmatory performance test.* You must submit to the Administrator a notification of your intention to conduct a confirmatory performance test and CMS performance evaluation and a site-specific test plan and CMS performance evaluation test plan at least 60 calendar days before the performance test is scheduled to begin. The Administrator will notify you of approval or intent to deny approval of the site-specific test plan and CMS performance evaluation test plan within 30 calendar days after receipt of the original test plans.

(2) After the Administrator has approved the site-specific test plan and CMS performance evaluation test plan, you must make the test plans available to the public for review. You must issue a public notice announcing the approval of the test plans and the location where the test plans are available for review.

* * * * *

5. Section 63.1209 is amended by revising paragraphs (a)(6)(i) and (b)(5)(i) to read as follows:

§ 63.1209 What are the monitoring requirements?

(a) * * *

(6) * * *

(i) *Calculation of rolling averages initially.* The carbon monoxide or hydrocarbon CEMS must begin recording one-minute average values by 12:01 a.m. and hourly rolling average values by 1:01 a.m., when 60 one-minute values will be available for calculating the initial hourly rolling average for those sources that come into compliance on the regulatory compliance date. Sources that elect to come into compliance before the regulatory compliance date must begin recording one-minute and hourly rolling average values within 60 seconds and 60 minutes (when 60 one-minute values will be available for calculating the initial hourly rolling average), respectively, from the time at which compliance begins.

* * * * *

(b) * * *

(5) * * *

(i) *Calculation of rolling averages initially.* Continuous monitoring systems must begin recording one-minute average values by 12:01 a.m., hourly rolling average values by 1:01 a.m.(e.g., when 60 one-minute values will be available for calculating the initial hourly rolling average), and twelve-hour rolling averages by 12:01 p.m.(e.g., when 720 one-minute averages are available to calculate a 12-hour rolling average), for those sources that come into compliance on the regulatory compliance date. Sources that elect to come into compliance before the regulatory compliance date must begin recording one-minute, hourly rolling average, and 12-hour rolling average values within 60 seconds, 60 minutes (when 60 one-minute values will be available for calculating the initial hourly rolling average), and 720 minutes (when 720 one-minute values will be available for calculating the initial 12-hour hourly rolling average) respectively, from the time at which compliance begins.

* * * * *

[FR Doc. 00–28710 Filed 11–8–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301074; FRL–6751–7]

RIN 2070–AB78

Sulfentrazone; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for combined residues of sulfentrazone *N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]phenyl]methanesulfonamide and its major metabolite 3-hydroxymethyl sulfentrazone *N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-hydroxymethyl-5-oxo-1*H*-1,2,4-triazol-1-yl]phenyl]methanesulfonamide in or on horseradish and sugarcane. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on horseradish and sugarcane. This regulation establishes a maximum permissible level for combined residues of sulfentrazone in these food commodities. The tolerances will expire and are revoked on December 31, 2002.

DATES: This regulation is effective November 9, 2000. Objections and requests for hearings, identified by docket control number OPP–301074, must be received by EPA on or before January 8, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301074 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Meredith Laws, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703 305–9366; and e-mail address: laws.meredith@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be potentially 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 codes	Examples of potentially affected entities
Industry	111 112 311	Crop production Animal production Food manufacturing
	32532	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,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301074. The official record consists of the documents specifically referenced in this action, 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, 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.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408 (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for combined residues of the herbicide sulfentrazone, in or on horseradish and sugarcane at 0.1 and 0.05 part per million (ppm) respectively. These tolerances will expire and are revoked on December 31, 2002. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . . ''

Section 18 of the FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by the Food Quality Protection Act (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemptions for Sulfentrazone on Horseradish and Sugarcane and FFDCA Tolerances

Illinois submitted a section 18 request for the emergency use of sulfentrazone on horseradish to control annual broadleaf weeds. EPA reviewed the request and concluded that the situation was urgent and nonroutine because heavy rains, urbanization, and drainage canal problems led to flooding of fields during the spring of 1999 resulting in significant problems with yellow nutsedge and broadleaf weeds.

Louisiana submitted a section 18 request for the emergency use of sulfentrazone to control morning glories infesting sugarcane fields. EPA agrees that morning glory infestations may create emergency conditions for growers since the registered alternative herbicide is ineffective against late season infestations when used on a higher yielding sugarcane variety. Due to this variety's earlier lay-by, late season applications of soil herbicides are not possible. Additionally, morning glory vines can cause indirect economic costs to growers by disabling combine-type harvesters.

EPA has authorized under FIFRA section 18 the use of sulfentrazone on horseradish and sugarcane for control of annual broadleaf weeds in Illinois and morning glories in Louisiana, respectively. After having reviewed the submissions, EPA concurs that emergency conditions exist for these States.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by the combined residues of sulfentrazone in or on horseradish and sugarcane. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemptions in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment as provided in section 408(l)(6). Although these tolerances will expire and are revoked on December 31, 2002, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on horseradish and sugarcane after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether sulfentrazone meets EPA's registration requirements for use on horseradish or on sugarcane or whether permanent tolerances for these uses would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of sulfentrazone by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than Illinois and Louisiana to use this pesticide on these crops under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemptions for sulfentrazone, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7) .

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of sulfentrazone and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for combined residues of sulfentrazone in or on horseradish and sugarcane at 0.1 and 0.05 ppm, respectively. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

A. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is

used to estimate the toxicological endpoint. However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for sulfentrazone used for human risk assessment is shown in the following Table 1:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR SULFENTRAZONE FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary females 13-50 years of age	NOAEL = 10.0 mg/kg/day UF = 100 Acute RfD = 0.10 mg/kg/day	FQPA SF = 10 aPAD = acute RfD/FQPA SF = 0.01 mg/kg/day	Rat Developmental LOAEL = 25 mg/kg/day based on decreased fetal weight and retarded skeletal development as evidenced by an increased number of litters with any variation and by decreased numbers of caudal vertebral and metacarpal ossification sites.
Acute Dietary general population including infants and children	NOAEL = 250 mg/kg/day UF = 100 Acute RfD = 2.5 mg/kg/day	FQPA SF = 10 aPAD = acute RfD/FQPA SF = 0.25 mg/kg/day	Acute Neurotoxicity Study in Rats LOAEL = 750 mg/kg/day based on increased incidences of clinical signs abdominal gripping, abdominogenital staining, and/or reddish- brown staining under the cage, FOB findings, and decreased motor activity which was reversed by Day 14 postdose. There was no evidence of neuropathology at the highest dose tested (2,000 mg/kg/day).

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR SULFENTRAZONE FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Chronic Dietary all populations	NOAEL= 14.0 mg/kg/day UF = 100 Chronic RfD = 0.14 mg/kg/day	FQPA SF = 10 cPAD = chronic RfD/FQPA SF = 0.014 mg/kg/day	2-Gen. Repro. Study in Rats LOAEL = 33/44 mg/kg/day in males and females, respectively based on 1) decreased maternal body weight and/or body weight gain during gestation in both P and F1 generations, 2) reduced premating body weight gains in the second generation (F1 adults), 3) increased duration of gestation in both F1 and F2 dams, 4) reduced prenatal viability (fetal and litter), 5) reduced litter size, 6) increased number of stillborn pups, 7) reduced pup and litter postnatal survival, and 8) decreased pup body weights throughout gestation. In males, effects included decreased fertility in F1 generation and/or atrophy of the germinal epithelium of the testes, oligospermia and intratubular degeneration of the seminal product in the epididymis.

*The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses*. Tolerances have been established (40 CFR 180.498) for the combined residues of sulfentrazone, in or on a variety of raw agricultural commodities. A permanent tolerance has been established for soybean, seed at 0.05 ppm. Time-limited tolerances have been established for cowpeas, lima beans, and sunflowers, with an expiration date of 12/30/00. Risk assessments were conducted by EPA to assess dietary exposures from sulfentrazone in food as follows:

i. *Acute exposure*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model (DEEM) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989-1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: Two acute doses and endpoints were selected, one for the females 13+ years old population subgroup and another for the U.S. population and other subgroups (excluding females 13+ years old). Therefore, acute dietary exposure analyses were performed using two separate endpoints. Tolerance level residues and 100% crop treated were used for all commodities (Tier 1). As the acute analyses were Tier 1 assessments, acute risk estimates are shown at the 95th percentile.

ii. *Chronic exposure*. In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989-1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Tolerance level residues and 100% crop treated information were used for all commodities (Tier 1).

iii. *Cancer*. Sulfentrazone has been classified as a ''Group E'' chemical (not likely to be carcinogenic to humans via relevant routes of exposure). Therefore, no cancer dietary exposure risk analysis was performed.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for sulfentrazone in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of sulfentrazone.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/ Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in groundwater. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/ EXAMS model that uses a specific high-end runoff scenario for pesticides.

GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to sulfentrazone they are further discussed in the aggregate risk sections below.

Based on the GENEEC and SCI-GROW models the EECs of sulfentrazone for acute exposures are estimated to be 12.5 parts per billion (ppb) for surface water and 21.8 ppb for ground water. The EECs for chronic exposures are estimated to be 12.0 ppb for surface water and 10.2 ppb for ground water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Sulfentrazone is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether sulfentrazone has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, sulfentrazone does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that sulfentrazone has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

C. Safety Factor for Infants and Children

1. *Safety factor for infants and children*— i. *In general*. FFDCA section 408 provides that EPA shall apply an additional ten–fold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

ii. *Developmental toxicity studies*— a. *Rats*. In the oral developmental study in rats, the maternal (systemic) NOAEL was 25 mg/kg/day, based on increased spleen weights and splenic extramedullary hematopoiesis at the LOAEL of 50 mg/kg/day. The developmental (fetal) NOAEL was 10 mg/kg/day, based on decreased mean fetal weight and retardation in skeletal development as evidenced by increased numbers of litters with any variation and by decreased numbers of caudal vertebral and metacarpal ossification sites at the LOAEL of 25 mg/kg/day.

In the dermal developmental study in rats, the maternal (systemic) NOAEL was ≥250 mg/kg/day and a LOAEL was not determined. The developmental (fetal) NOAEL was 100 mg/kg/day, based on decreased fetal weight and increased fetal variations (hypoplastic or wavy ribs, incompletely ossified lumbar vertebral arches, incompletely ossified ischia or pubes, and reduced numbers of thoracic vertebral and rib ossification sites) at the LOAEL of 250 mg/kg/day.

b. *Rabbits*. In the oral developmental toxicity study in rabbits, the maternal (systemic) NOAEL was 100 mg/kg/day, based on increased abortions, clinical signs (decreased feces and hematuria), and reduced body weight gain during gestation at the LOAEL of 250 mg/kg/day. The developmental (pup) NOAEL was 100 mg/kg/day, based on increased resorptions, decreased live fetuses per litter, and decreased fetal weight at the LOAEL of 250 mg/kg/day.

iii. *Reproductive toxicity study—Rats*. In the 2-generation reproductive toxicity study in rats, the maternal (systemic) NOAEL was 14/16 mg/kg/day in males and females, respectively, based on decreased maternal body weight and/or body weight gain during gestation in both P and F1 generations, and reduced premating body weight gains in the second generation (F1 adults) at the LOAEL of 33/44 mg/kg/day for males and females, respectively. The developmental (pup) NOAEL was 14/16 mg/kg/day based on 1) reduced prenatal viability (fetal and litter), 2) reduced litter size, 3) increased number of stillborn pups, 4) reduced pup and litter postnatal survival, and 5) decreased pup body weights throughout lactation at the LOAEL of 33/44 mg/kg/day. The reproductive NOAEL was 14/16 mg/kg/day, based on 1) increased duration of gestation in both F1 and F2 dams, 2) decreased fertility in F1 generation (males), and/or 3) atrophy of the germinal epithelium of the testes, oligospermia and intratubular degeneration of the seminal product in the epididymis at the LOAEL of 33/44 mg/kg/day.

iv. *Prenatal and postnatal sensitivity*. The toxicological data base for evaluating prenatal and postnatal toxicity for sulfentrazone is complete with respect to current data requirements. Based on the developmental and reproductive toxicity studies discussed above for sulfentrazone there appears to be prenatal and postnatal sensitivity.

v. *Conclusion*. There is a complete toxicity data base for sulfentrazone and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X safety factor to protect infants and children should be retained. For acute dietary analysis, the FQPA SF was retained and is applicable to the U.S. population and all subgroups due to the increased susceptibility observed in the prenatal developmental studies. For chronic dietary analysis, the

FQPA safety factor was retained and is applicable for all populations due to the qualitative increased susceptibility observed in the 2-generation reproduction study.

D. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD − (average food + chronic non-dietary, non-occupational exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to sulfentrazone in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of sulfentrazone on drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to sulfentrazone will occupy <1% of the aPAD for the U.S. population, 6% of the aPAD for females 13 years and older, <1% of the aPAD for all infants (<1 year old) and <1% of the aPAD for children (1-6 years old). In addition, despite the potential for acute dietary exposure to sulfentrazone in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of sulfentrazone in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 2.

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO SULFENTRAZONE

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
Females, 13-50 years old	0.01	6	12.5	21.8	284
U.S. population (including infants and children)	0.25	<1	12.5	21.8	8,700
Children (1-6 years old) and all infants (1 year old)	0.25	<1	12.5	21.8	2484

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to sulfentrazone from food will utilize 2% of the cPAD for the U.S. population, 4% of the cPAD for all infants (< 1 year old) and 6 % of the cPAD for children (1-6 years old). There are no residential uses for sulfentrazone that result in chronic residential exposure to sulfentrazone. In addition, despite the potential for chronic dietary exposure to sulfentrazone in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of sulfentrazone in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO SULFENTRAZONE

Population Subgroup	cPAD (mg/kg)	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S Population	0.014	2	4.0	10.2	478
Children (1-6 years old)	0.014	6	4.0	10.2	132
Children (Females 13-50 years old)	0.014	2	4.0	10.2	412
Males (13-19 years old)	0.014	3	4.0	10.2	477

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Sulfentrazone is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level).

Sulfentrazone is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

5. *Aggregate cancer risk for U.S. population.* Because sulfentrazone is not a carcinogen, a cancer aggregate risk assessment was not conducted.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to sulfentrazone residues.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical methodology for the determination of sulfentrazone, 3-desmethyl sulfentrazone, and 3-hydroxymethyl sulfentrazone residues in/on various matrices was submitted with a petition for a sulfentrazone tolerance on soybeans. A petition method validation (PMV) was successfully completed by the Agency's Analytical Chemistry Laboratory. The Limit of Quantitation (LOQ) and Minimum Detection Limit (MDL) were determined to be 0.05 ppm and 0.005-0.025 ppm, respectively. EPA concluded that the method is suitable for enforcement purposes.

Adequate enforcement methodology (example - gas chromotography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

B. International Residue Limits

There are no Codex, Canandian or Mexican residue limits for sulfentrazone on horseradish and sugarcane. Therefore, no compatibility problems exist for the proposed tolerances.

C. Conditions

Rotational field trial data for wheat, corn, rice and sorghum were submitted in support of a petition for a sulfentrazone tolerance on soybeans. Permanent tolerances have been established on cereal grains (excluding sweet corn) when planted in rotation with the primary crop soybeans. The suggested rotational crop restrictions on the Section 18 labels pertaining to these emergencies are the same as those on the label for soybeans. Therefore, additional rotational crop data are not necessary for this action.

VI. Conclusion

Therefore, the tolerances are established for combined residues of sulfentrazone, in or on horseradish and sugarcane at 0.1 and 0.05 ppm, respectively.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301074 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before January 8, 2001.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential 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. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by the docket control number OPP–301074, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental

Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerance/exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). 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.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 25, 2000.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180— [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a) and 371.

2. Section 180.498 is amended by alphabetically adding the commodities to the table in paragraph (b) to read as follows:

§ 180.498 Sulfentrazone; tolerances for residues.

* * * * *

(b)* * *

Commodity	Parts per million	Expiration/Revocation Date
* * * * *	*	*
Horseradish, Roots	0.1	12/31/02
* * * * *	*	*
Sugarcane	0.05	12/31/02
* * * * *	*	*

* * * * *

[FR Doc. 00–28714 Filed 11–8–00; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6898–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final deletion of the Superfund Site from the National Priorities List (NPL).

SUMMARY: EPA Region 5 announces the deletion of the Ilada Energy Company Site (Site) from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substance Pollution Continency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, (CERCLA). EPA and the Illinois Environmental Protection Agency (IEPA) have determined that the Site poses no significant threat to public health or the environment and, therefore, further remedial measures pursuant to CERCLA are not appropriate.

DATES: This ''direct final'' action will be effective January 8, 2001, unless EPA receives dissenting comments by December 11, 2000. If written dissenting comments are received, EPA will publish a timely withdrawal of the rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Jon Peterson, Remedial Project Manager, or Gladys Beard, Associate Remedial Project Manager, U.S. Environmental Protection Agency, Superfund Division, U.S. EPA, Region 5, 77 W. Jackson Blvd., (SR–6J), Chicago, IL 60604. Requests for comprehensive information on this Site is available through the public docket which is available for viewing at the Site Information Repositories at the following locations: U.S. EPA Region 5, Administrative Records, 77 W. Jackson Blvd., Chicago, IL 60604, Illinois Environmental Protection Agency, 1021 North Grand Avenue East, Springfield, Illinois 62794 and Cape Girardeau Public Library, 711 N. Clark, Cape Girardeau, MO 63701.

FOR FURTHER INFORMATION CONTACT: Jon Peterson at (312) 353–1264, email *peterson.jon@epa.gov* or Gladys Beard (SR–6J), U.S. Environmental Protection Agency, 77 W. Jackson, Chicago, II, (312) 886–7253, FAX (312) 886–4071, e-mail beard.gladys@epa.gov

SUPPLEMENTARY INFORMATION:

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I. Introduction
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IV. Basis of Intended Site Deletion
V. Action

I. Introduction

The Environmental Protection Agency (EPA) Region 5 announces the deletion of the Ilada Energy Company Site, East Girardeau, Illinois from the National Priorities List (NPL), appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. EPA and the State of Illinois have determined that the remedial action for the Site has been successfully executed. EPA will accept comments on this action for thirty days after publication of this action in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the history of the Ilada Energy Company Site and explains how the Site meets the deletion criteria. Section V states EPA's action to delete the Site from the NPL unless dissenting comments are received during the comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that Sites may be deleted from, or recategorized on the NPL where no further response is appropriate. In making a determination to delete a Site from the NPL, EPA shall consider, in consultation with the state, whether any of the following criteria has been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Even if the Site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the Site above levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the Site will be conducted at least every five years after the initiation of the remedial action at the Site to ensure that the Site remains protective of public health and the environment. In the case of this Site, EPA will conduct a Five-Year Review in the year of 2005. As explained below, the Site meets the NCP's deletion criteria (i) listed above. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site shall be restored to the NPL without the application of the Hazard Ranking System (HRS).

III. Deletion Procedures

The following procedures were used for the intended deletion of the Site:

(1) All appropriate responses under CERCLA have been implemented and no further action by EPA is appropriate; (2) The State has concurred with the proposed deletion decision; (3) A notice has been published in the local newspaper and has been distributed to appropriate federal, state, and local officials and other interested parties announcing the commencement of a 30-day dissenting public comment period on EPA's Direct Final Action to Delete; and, (4) All relevant documents have been made available for public review in the local Site information repositories. EPA is requesting only dissenting comments on the Direct Final Action to Delete.

For deletion of the Site, EPA's Regional Office will accept and evaluate public comments on EPA's Final Notice before making a final decision to delete. If necessary, the Agency will prepare a Responsiveness Summary, responding to each significant comment submitted during the public comment period. Deletion of the Site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As mentioned in section II of this document, § 300.425(e)(3) of the NCP states that the deletion of a Site from the NPL does not preclude eligibility for future response actions.

IV. Basis for Intended Site Deletion

The following site summary provides the Agency's rationale for the proposal to delete this Site from the NPL.

Site Background and History

The Ilada Energy Company site (the ''Site'') encompasses approximately 17 acres in southern Illinois, south of the town of East Cape Girardeau in the northwest quadrant of Section 32, Township 14 South, Range 3 West. The surrounding area is utilized primarily for agricultural purposes. Farmland borders the Site to the northeast, but the remainder is owned by the US Forest Service and used for silviculture. The area is relatively flat with a ground surface elevation of approximately 330 feet above mean sea level. The Site is located within the 100-year floodplain of the Mississippi River on the ''dry'' side of the 20-foot high flood control levee which is located immediately to the south of the Site. A 200-foot wide slough was formed along the south toe of the levee as a result of borrowing material for its construction. This area is swampy during the wet season (approximately Fall through Spring) supporting riparian vegetation consisting of cattails and other aquatic plants. The quarter-mile wide strip between the river and the slough comprises wooded areas, dense brush and ground vegetation, and patches of overgrown, idle cropland.

The main portion of the Site is surrounded by a locked chain-link fence to restrict access. Prior to the removal action, there were seven structures and twenty-two bulk oil tank and numerous underground pipelines. All were removed from the Site along with the tank contents and the grossly contaminated, on Site soil. The Site is overgrown yearly with native grasses and weeds.

The Site originally consisted of a tank farm built for the U. S. Department of War (DOW) in 1942. The location was selected to take advantage of access provided by the Mississippi River. The facility was operated by Allied Oil Terminal Company as a bulk fuel oil storage/transfer terminal until the early or mid-1950's. Transfer piping ran across the levee towards the river.

After Allied Terminal ceased using the facility in the mid-1950's, the Site sat idle until purchased by the Kara Oil Company in 1979. In 1982, it was assigned to Larry Wilson of the Ilada Energy Company (Ilada).

From 1981 to 1983, Ilada operated the tank farm as a waste oil reclamation facility. Additional tanks and structures were added to the facility in that time period.

Several inspections of the then operating facility were conducted by the Illinois EPA and the USEPA in 1982 and 1983. These inspections revealed that Ilada was improperly storing, handling, mixing, and disposing waste oils contaminated with PCBs. Ilada and the USEPA entered into a consent decree in January 18, 1983. This decree ordered Ilada to remove PCB-contaminated materials and cease handling hazardous materials and waste. Among other actions, the order required the removal of PCB-contaminated materials in accordance with Toxic Substance Control Act (TSCA). It also required Ilada to close all activities relating to the receipt, transportation, storage, handling, use and disposal of PCBs, chemicals, and other wastes. Later in 1983, the boiler was removed by Ilada as well as some pumps and related equipment from the pump house, and office and laboratory equipment were removed from the Office Building. In 1986, the Illinois EPA installed six groundwater monitoring wells on the Site. The Site was subsequently proposed for inclusion on the National Priorities List (NPL) pursuant to section 105 of CERCLA on June 24, 1988. The listing of the Site on the NPL was finalized on October 4, 1989. Site visits in 1989 indicated spillage and leakage of oils on the ground near several tanks and tank valves. Ilada failed to remove any of the PCB waste. After Ilada's failure to perform the required actions, a Unilateral Order was issued.

In 1989, a Unilateral Administrative Order was issued pursuant to section 106 of CERCLA to remove PCB materials from the Site. As a result of the section 106 Order, four of the companies included as PRPs formed the Ilada Energy Company—East Cape Girardeau Group. These companies included Shell Oil Company, Metal Container Corporation, Granite City Steel Division of National Steel, and Emerson Electric Company. The group was then ordered to initiate a Remedial Investigation (RI) to determine the source, nature and extent of the contamination at the Site following the removal action.

The RI was finalized and approved by Illinois EPA in April of 1999. The Human Health Baseline Risk Assessment (HHRA) and Ecological Risk Assessment (ERA) were finalized and approved by Illinois EPA in July of 1999.

All structures used by Ilada Energy, including foundations, tanks, above ground and buried pipelines (including those south of the levee), debris, and grossly contaminated soils were removed as part of the August 7, 1992, removal action. The only remnants of the tank farm are the repaired seven-foot high perimeter fence, roads, subdued remnants of the six berms around the tank areas, and the former site production water well. Nearly all of the brush and trees were removed during the removal action. Weeds and brush have re-established a vegetative cover since completion of site activities.

With the exception of a localized pool of subsurface aviation gasoline, no continuing source of constituents associated with site operations remains on the Site. The lateral extent of this pool has been fully delineated and is confined to an area of about 50 by 75 feet. This pool was observed in one monitoring well, D12. Subsurface investigation in the area of D12 revealed that the pool is discontinuous and is not present as a contiguous pool of mobile liquid floating on the groundwater. All other materials and potential sources, including grossly contaminated surficial soils, were removed during the removal action.

The 1999 RI report yielded information regarding the nature and extent of the contamination remaining at the Site including the following:

- The site surface and subsurface soils contain generally low levels of Volatile Organic Compounds (VOC's) and Semi-Volatile Organic Compounds (SVOC'S).
- A localized subsurface pocket of light non-aqueous phase liquid (LNAPL) composed of aviation gasoline remains from the site's original use as a fuel storage depot approximately 40 years ago. The lateral extent of this pocket measures approximately 50 by 75 feet, and it is entirely contained on the Site.
- The adjacent properties to the south, east, west, and north are unavailable for future development because they were acquired in 1997 as part of a federal flood control program.

The removal action conducted between 1989 and 1991 substantially mitigated the human health and environmental threats posed by this site. This action resulted in the removal from the Site of all tanks and their contents, piping, structures, and grossly contaminated soils. A total of 442,162 gallons of oil and sludge were sent offsite to be burned as waste fuel in cement kilns; 142,700 gallons of PCB contaminated oil and sludge were incinerated at a permitted off-site facility; 865,700 gallons of contaminated water were treated and discharged to the river after testing showed that it met Clean Water Act standards; 1055 cubic yards of soil and miscellaneous debris were disposed offsite as special waste; 637 cubic yards were disposed offsite as demolition debris; fifty cubic yards of

PCB-contaminated soil were landfilled at a permitted offsite facility; and 1264 tons of steel were recycled. All wastes were removed from the Site and treated or disposed elsewhere.

During the RI, an analysis was conducted to estimate the health and environmental problems that could result from the residual soil and groundwater constituents at the Ilada Energy Site after the completion of the removal action at the Site.

The Proposed Plan for the Ilada Energy Superfund Site was released for public comment in July 1999. The Proposed Plan identified the ''No Further Action'' alternative as the preferred and only alternative for the Site. Illinois EPA reviewed all written and verbal comments submitted during the public comment period. None were received. It was determined that no significant changes to the remedy, as originally identified in the Proposed Plan, were necessary or appropriate.

A no further remedial action Record of Decision (ROD) was sign on September 27, 1999. It has been determined that no further remedial action is necessary for the purpose of mitigating environmental or human health threats at this Site. The selected remedy is protective of human health and the environment, attains Federal and State requirements that are applicable or relevant and appropriate for this remedial action, and is cost-effective.

This remedy requires the maintenance of institutional controls. The institutional controls that consist of the following:

- Prohibiting the installation of groundwater wells for the purpose of producing potable water, and;
- Prohibiting the use, improvement or maintenance of any type of Site property for residential purposes.

V. Action

The remedy selected for this Site has been implemented in accordance with the Record of Decision. The remedy along with the previous removal actions have resulted in the significant reduction of the long-term potential for release of contaminants, therefore, threats to human health and the environment have been minimized. EPA and the State of Illinois find that the response actions implemented provide adequate protection of human health the environment.

The Illinois EPA concurs with the EPA that the criteria for deletion of the Site have been met. Therefore, EPA is deleting the Site from the NPL.

This action will be effective January 8, 2001. However, if EPA receives dissenting comments by December 11, 2000, EPA will publish a document that withdraws this action.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: October 27, 2000.

Gary Gulezian,

Acting Regional Administrator, Region 5.

Part 300, title 40 of Chapter I of the Code of Federal Regulations is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321 (c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p.193.

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended by removing the Site for ''Ilada Energy Co., East Cape Girardeau, IL''.

[FR Doc. 00–28514 Filed 11–8–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–2372; MM Docket No. 99–220; RM–9601 and RM–9636]

Radio Broadcasting Services; Darby and Stevensville, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 300A to Darby, Montana, in response to a petition filed by Mountain West Broadcasting and denies the petition filed by The Battani Corporation requesting the allotment of Channel 300C2 at Stevensville, Montana. *See* 64 FR 34751, June 29, 1999. The coordinates for Channel 300A at Darby are 46–01–18 and 114–10–43. With this action, this proceeding is terminated. A filing window for Channel 300A at Darby will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective December 11, 2000.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–220, adopted October 11, 2000, and released October 20, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Darby, Channel 300A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–28690 Filed 11–8–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2375; MM Docket No. 99–75; RM–9446]

Radio Broadcasting Services; Grants, Milan, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule; reconsideration.

SUMMARY: The Commission, at the request of Against the Wind Broadcasting, Inc., licensee of Station KXXQ(FM) (formerly KQEO(FM)), Grants, New Mexico, reconsiders and sets aside the reallotment of Channel 264A from Grants to Milan, New Mexico. *See* 65 FR 59751 (October 6, 2000).

DATES: Effective December 11, 2000.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 99–75, adopted October 11, 2000, and released October 20, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.202 [Amended]

2. Section 73.202(b) the FM Table of Allotments under New Mexico is amended by removing Milan, Channel 264A and adding Channel 264A at Grants.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–28689 Filed 11–8–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2373; MM Docket No. 99–195; RM–9563, RM–9958]

Radio Broadcasting Services; Wheatland and Wright, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Mountain West Broadcasting, allots Channel 293C1 at Wheatland, Wyoming, as the community's second local FM transmission service (RM–9563) *See* 64 FR 29979, June 4 1999. At the request of Mount Rushmore Broadcasting, Inc., we also allot Channel 289A at Wheatland and Channel 224A at Wright, Wyoming, as each community's third local FM transmission service (RM–9958). Channel 293C1 can be allotted at Wheatland in compliance with the Commission's minimum distance separation requirements with a site restriction of 41 kilometers (25.5 miles) north; and Channel 289A can also be allotted to Wheatland at city reference coordinates. Additionally, Channel 224A can be allotted to Wright in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.7 kilometers (6.0 miles) north to avoid a short-spacing to the allotment reference site for Channel 223C1, Douglas, Wyoming. The coordinates for Channel 293C1 at Wheatland are 42–25–32 North Latitude and 104–57–21 West Longitude; and the coordinates for Channel 289A at Wheatland are 42–03–16 North Latitude and 104–57–08 West Longitude. Additionally, the coordinates for Channel 224A at Wright are 43–50–02 North Latitude and 105–28–29 West Longitude.

DATES: Effective December 11, 2000. A filing window for Channels 289A and 293C1 at Wheatland, Wyoming, and Channel 224A at Wright, Wyoming, will not be opened at this time. Instead, the issue of opening filing windows for these channels will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–195, adopted October 11, 2000, and released October 20, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 54, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by adding Channels 289A and 293C1 at Wheatland; and by adding Wright, Channel 224A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–28687 Filed 11–8–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 00–44; FCC 00–343]

Extension of the Filing Requirement for Children's Television Programming Reports (FCC Form 398)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's rules to continue indefinitely the requirement that commercial broadcast television licensees file with the Commission their quarterly Children's Television Programming Reports (FCC Form 398). The document also requires that the reports be filed quarterly, when they are prepared, rather than annually. In addition, the document also makes a number of revisions to FCC Form 398 to make the information contained in the form clearer and more useful to the public and the FCC. The intended effect of these actions is to assist the Commission in continuing to enforce the Children's Television Act of 1990 (''CTA'') and our rules implementing the CTA by facilitating monitoring of the amount and quality of educational television programming for children and industry compliance with the Commission's children's educational programming requirements.

DATES: These rules contain information collection requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date. Written comments by the public on the new and/or modified information collections are due January 8, 2001.

ADDRESSES: In addition to filing comments with the Office of the Secretary, a copy of any comments on the information collection(s) contained

herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, D.C. 20554, or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Kim Matthews, Policy and Rules Division, Mass Media Bureau, at (202) 418–2130, TTY (202) 418–2989. For additional information concerning the information collection(s) contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the *Report and Order* (''*R&O*'') in MM Docket No. 00–44, FCC 00–343, adopted on September 14, 2000, and released on October 5, 2000. The full text of this decision is available for inspection and copying during regular business hours in the FCC Reference Center, 445 Twelfth Street, SW, Room CY–A257, Washington DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 445 Twelfth Street, SW, Room CY–B402, Washington DC. The complete text is also available under the file name fcc00343.pdf on the Commission's Internet site at www.fcc.gov.

This document contains modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collections contained in this proceeding.

Electronic Access and Filing Addresses

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies via the Internet to *http://www.fcc.gov.e-file/ecfs.html.* Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form, <your e-mail address>.'' A sample form and directions will be sent in reply.

Paperwork Reduction Act

This document contains either new or modified information collection(s). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection(s) contained in this *R&O,* as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due January 8, 2001. Comments should address (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) ways to enhance the quality, utility, and clarity of the information collected; (c) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–XXXX

Title: Children's Television Programming Report

Form No: FCC Form 398

Type of Review: revision of existing collection

Respondents: business or other for-profit

Number of respondents: 1,250

Estimated Time Per Response: 6 hours/quarter

Total Annual Burden: 30,000 hours

Total Annual Costs: $489,600

Needs and Uses: The *R&O* continues indefinitely the requirement that commercial broadcast television licensees file with the Commission their quarterly Children's Television Programming Reports (FCC 398). The *R&O* also requires that the reports be filed quarterly, when they are prepared, rather than annually. In addition, the *R&O* makes a number of revisions to FCC 398 to make the information contained in the form clearer and more useful to the public and the FCC. These revisions include a new preemption report to be completed for each preempted core program during the quarter. This information collection will assist in efforts by the public and the Commission to monitor compliance with the Children's Television Act.

Synopsis of Report and Order

1. In this *Report and Order* (''*R&O*''), the Commission makes a number of changes to the children's educational television reporting requirements of commercial broadcast television licensees. First, we extend indefinitely the requirement that commercial broadcast television licensees file with the Commission their quarterly Children's Television Programming Reports (FCC Form 398). The Commission's rules currently state that such reports shall be completed quarterly and filed on an annual basis for an experimental period of three years, from January 1998 through January 2000. These reports are required to be filed electronically. Second, we require broadcasters in the future to file these reports on a quarterly basis, at the time they are prepared, rather than annually. Finally, we also announce herein a number of revisions to be made to FCC Form 398 to make the information contained in the form clearer and more useful to the public and the FCC. The actions we take herein will assist the Commission in continuing to enforce the Children's Television Act of 1990 (''CTA'') and our rules implementing the CTA by facilitating monitoring by the FCC and the public of the amount and quality of educational television programming for children and industry compliance with the Commission's children's educational programming requirements.

2. Data indicate that children spend, on average, almost three hours a day watching television. In view of the significant impact this medium has on children, Congress has concluded that television should be contributing to children's development. The CTA requires the Commission, in its review of each television broadcast license renewal application, to ''consider the extent to which the licensee . . . has served the educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs.'' In enacting the CTA, Congress found that, while television can benefit society by helping to educate and inform children, there are significant market disincentives for commercial broadcasters to air children's educational and informational programming. The objective of Congress in enacting the CTA was to increase the amount of educational and informational programming available on television. The CTA places on every licensee an obligation to provide such programming, including programming specifically designed to educate and inform children, and requires the FCC to enforce that obligation.

3. In August 1996, the Commission adopted its current educational programming rules to strengthen its enforcement of the CTA. *See Policies and Rules Concerning Children's Television Programming,* 61 FR 43981 (Aug. 27, 1996). The Commission's rules include several measures to increase the availability of programming ''specifically designed'' to serve children's educational needs (otherwise known as ''core'' programming) and to facilitate public access to information about such programming. These measures include a requirement the licensees identify core programming at

the time it is aired and in information provided to publishers of television guides. Licensees are also required to designate a children's liaison at the station responsible for collecting comments on the station's compliance with the CTA. Furthermore, the rules establish a definition of ''core'' programming as well as a three-hour-per-week processing guideline pursuant to which broadcasters airing at least three hours per week of programming that meets the definition of ''core'' will receive staff-level approval of the CTA portion of their renewal applications.

4. One of the most important public information measures adopted by the Commission in 1996 was the requirement that licensees complete a Children's Television Programming Report, on FCC Form 398, each calendar quarter and place the report in the station's public inspection file. Broadcasters are required to separate the children's programming reports from other materials they maintain in their public files. The Commission required that these quarterly reports be filed jointly with the Commission on an annual basis for an experimental period of three years. Among other things, these reports identify the educational and informational programs aired by the licensee over the previous quarter and the days and times these programs were regularly scheduled, the age of the target audience for each program, and the average number of hours per week of core programming broadcast over the past quarter. Licensees must include in the reports an explanation of how each core program meets the definition of ''core'' programming adopted by the Commission. Stations must also identify in their reports the core programs the station plans to air during the next calendar quarter. The Commission makes the reports available at its website.

5. The public information initiatives, including the Children's Television Programming Reports, are an integral part of the children's programming rules. These measures are designed to ensure that the public, and especially parents, has access to information regarding the educational programming being aired by broadcasters so that parents and others can help achieve the goal of the CTA to increase the amount of educational programming available on television. Facilitating public access to the information contained in the Children's Television Programming Reports helps achieve the goals of the CTA in a number of ways. Parents who have access to information about educational programming, such as the titles of programs, the times they are regularly scheduled to air, and the age for which the programs are intended, can select such programming for their children to watch, thereby increasing the audience for such programs and the incentive of broadcasters to air, and producers to supply, more such programs. The information contained in the reports can also be used by parents, educators, and others interested in educational programming to monitor a station's performance in complying with the CTA and the Commission's rules. In this way, the public can play an active role in helping to enforce children's programming requirements. Finally, requiring broadcasters to identify programming they rely upon to meet their obligation to air educational programming makes broadcasters more accountable to the public. Improving broadcaster accountability minimizes the need for government involvement to enforce the CTA and helps to ensure that broadcasters, with input from the public, rather than the Commission determine which television programs serve children's educational needs.

6. In its August 1996 Children's Programming Report and Order, the Commission also required that a children's program be ''regularly scheduled'' to be counted as core programming for purposes of meeting the three-hour-per-week processing guideline, i.e.,—a core children's program must ''be scheduled to air at least once a week'' and ''must air on a regular basis.'' The Commission stated that television series typically air in the same time slot for 13 consecutive weeks, although some episodes may be preempted for programs such as breaking news or live sports events. The Commission noted that programming that is aired on a regular basis is more easily anticipated and located by viewers, and can build loyalty that will improve its chance for commercial success. The Commission stated that it would leave to the staff to determine, with guidance from the full Commission as necessary, what constitutes regularly scheduled programming and what level of preemption is allowable. Subsequent to the adoption of the Children's Programming Report and Order, and in response to requests from the ABC, CBS, and NBC networks that local stations be given flexibility to reschedule episodes of core programs that are preempted by live network sports events without adversely affecting the program's status as ''regularly scheduled,'' the Mass Media Bureau has allowed the networks limited flexibility in preempting core children's programming. Specifically, within certain limitations, the Bureau advised that preempted core programs could count toward a station's core programming obligation if the program were rescheduled. The Bureau also indicated that it would revisit this limited flexibility regarding preempted core programming based on the level of preempted programs, the rescheduling and broadcast of the preempted programs, and the impact of promotions and other steps taken by the stations to make children's educational programming a success.

Filing Requirement Extension

7. The Commission has reviewed all of the reports filed since commencement of the FCC filing requirement, and has used the information in the reports to evaluate industry practices in connection with preemption of children's programming. In addition, the Commission staff is currently preparing an analysis based on the data reflected in reports filed over the past three years. In adopting the children's programming rules, the Commission stated it would monitor the broadcast industry's children's educational programming performance for three years based upon the Children's Television Programming Reports filed with the Commission, and would review the reports at the end of the three-year period and take appropriate action as necessary to ensure that stations are complying with the rules and guidelines.

Quarterly Filing

8. In addition to extending the filing requirement, we will require broadcasters to file their Children's Television Programming Reports with the Commission on a quarterly basis, at the time the reports are prepared, rather than annually. Section 73.3526(e)(11)(iii) currently requires that the report for each calendar quarter be filed in the station's public inspection file by the tenth day of the succeeding calendar quarter. Beginning January 10, 2001, we will require that reports for each quarter be filed electronically with the Commission by the same date the report is due to be placed in the station's public inspection file.

9. We agree with CME et al. that quarterly filing with the Commission will provide the public and the Commission with more current information on the educational and informational programming offered by broadcasters to meet their obligation under the CTA and our rules. Among other things, the reports include information on the core educational and informational programs the licensee

plans to air during the next calendar quarter. The purpose of requiring licensees to report this information is to permit parents, teachers, and others to better anticipate and plan for the viewing of educational programs by children. Facilitating timely public access to the station's schedule of core educational and informational programs for the succeeding calendar quarter will permit parents and others to use this information more effectively to plan their children's television viewing. CME et al. suggests that quarterly filings will be more helpful to parents, and argues that they will also allow researchers to report more timely on programming trends for the annual television season, which could influence programming for the subsequent television season.

10. NAB opposes a quarterly filing requirement, arguing that licensees appear to be complying with the children's television programming rules and that there is no demonstrated need for increased reporting requirements. While we agree that the reports filed since our revised children's television programming rules became effective indicate that virtually all licensees claim to be airing at least 3 hours per week of programming that meets our definition of programming ''specifically designed'' to meet the educational and informational needs of children, we believe that improving public access to the information contained in the reports will assist parents and others interested in selecting programs for children to watch. As noted, assisting parents in choosing educational programming for their children may possibly increase the commercial success of such programming and thereby prompt broadcasters to increase the amount of educational and informational broadcast television programming available to children—one of the underlying goals of our children's programming public information initiatives. More timely information will also assist those interested in monitoring station performance under our rules, thus assisting the Commission in its enforcement role.

11. As reports must now be prepared and placed in the station's public inspection file on a quarterly basis, we continue to believe that requiring these quarterly reports to be transmitted electronically to the Commission on a quarterly basis, rather than once a year, will not impose a significant additional burden on licensees. In this regard, we note that more than seventy percent of licensees already voluntarily file their reports quarterly. Reports are currently required to be filed electronically with the Commission, and the Commission makes an electronic version of a blank FCC Form 398 available on its website to be used by licensees to prepare their quarterly submissions. As CME et al. suggests, transmitting the reports to the Commission quarterly rather than annually should require very little additional time and effort on the part of licensees. In view of the benefits of quarterly filing with the FCC and the minimal additional burden this will impose on licensees, we believe that quarterly filing is warranted.

Changes to FCC Form

12. CME et al. suggested that FCC Form 398 be revised to provide more information regarding (1) why a broadcaster has preempted a children's educational program, (2) which program guide publishers are not printing the programming information provided by local broadcasters, and (3) what efforts broadcasters are making to publicize the existence and location of their Reports (question 8). CME et al. also suggests that broadcasters be required to post their reports on their website, that the FCC's own children's television webpage be made more user-friendly, and that Form 398 be revised to reflect the station's license renewal date.

Preemption Report

13. The Commission required that programming must be ''regularly scheduled'' to qualify under the three-hour guideline. This requirement was based on the fact that programming that is aired on a regular basis is more easily anticipated and located by viewers, and therefore more likely to be seen by its intended audience. Although acknowledging that preemption might occur, the Commission expected that preemption of core programming would be rare. The Mass Media Bureau staff has recently reviewed a random sample of the Children's Television Programming Reports, and determined that the average preemption rate by stations affiliated with the largest networks during the past two years is nearly 10%, and has been as high as 25% during a quarter when a large number of sports programming commitments. Given this level of preemption, and the difficulty that some members of the public and the Commission staff have experienced in interpreting the information set forth in Form 398, we wish to gather more information about the circumstances of preemption to ensure that our preemption policy does not thwart the CTA.

14. To make the information in the Children's Television Programming Reports clearer and to improve public access to information about educational and informational programming and licensee compliance with the CTA and our rules, we will make a few revisions to FCC Form 398. Currently, question 5 of FCC Form 398 requires broadcasters to list, among other information, the title of each core educational and informational program aired by the station during the past calendar quarter, the days and times the program is regularly scheduled, the total times the program aired, the number of preemptions and, if the program was preempted and rescheduled, the date and time the program was aired. From the way this question is currently worded and formatted, it is difficult to determine from the responses to this question exactly how many times each core program was preempted during the calendar quarter, whether the preempted episode was eventually aired and, if so, when the program was aired. In addition, as CME suggests, it would be useful to know the reason for each preemption. Although we encourage stations to reschedule core programming preempted for breaking news, even if programs preempted for breaking news are not rescheduled they can count toward the three-hour-per-week core programming guideline. We cannot currently determine whether a program was preempted for breaking news or another reason, and thus whether the program must have been rescheduled and aired in order to count toward the three-hour guideline. Finally, we would also like to know if licensees made efforts to notify viewers and publishers of program guides of the date and time their rescheduled programs would air. To address these issues, we will revise question 5 of FCC Form 398 to gather more information about preempted core programs during the quarter and add as an addendum to the form a ''Preemption Report'' to be completed for each preempted core program during the quarter. The Preemption Report will request information on the date of each preemption, if the program was rescheduled the date and time the program was aired, and the reason for the preemption (e.g., we will ask the licensee to pick a reason from among several options, including breaking news). We will also ask licensees to indicate whether promotional efforts were made to notify the public of the time and date the rescheduled program would air. This data will provide more complete information regarding the level of preemption of core programs and station practices in rescheduling such programs. This information will in turn allow the FCC and interested

members of the public to continue to monitor the impact of preemptions generally on the availability of core programs.

Program Guide Information

15. We will also revise question 4 of FCC Form 398 in order to collect more extensive data about the information furnished by licensees to publishers of program guides regarding core programming aired by the station. Section 73.673(b) of our rules requires commercial television station licensees to provide information identifying core programming, and the age group for which the program is intended, to publishers of program guides. In adopting this requirement, we noted that program guides are an effective means of providing parents with advance notice of scheduling of educational programs, and that such information can assist both parents in finding suitable programs for their children and others who wish to monitor station performance in complying with the CTA. While we noted that we cannot require guides to print this information, we stated that the information is more likely to be included in program listings if broadcasters routinely provide it.

16. Question 4 as currently written asks whether licensees have provided information to publishers of program guides as required by our rules, with the licensee indicating ''yes'' or ''no.'' We will revise this question to ask licensees to identify by name the program guides to which information was provided, but decline to require broadcasters to indicate in their reports whether the program guides to which the information was provided actually published this information. Our purpose in making this change is twofold. First, we agree with CME et al. that requiring broadcasters to list the publishers to whom information was submitted will provide parents, the public and the Commission useful data by which to judge a broadcasters good-faith efforts to comply with our goal of facilitating public access to information about educational programming. Second, and perhaps more important, requiring broadcasters to provide this information will help in identifying those publishers that decline to include information about educational programming in their program guides. Studies examining the impact of the children's programming rules have concluded that many parents still do not know which programs carry educational labels, and that the widespread failure of program guides to include information identifying core educational programming contributes to this problem. It does not appear that any newspapers or program guides routinely include in their television listings the symbols identifying core programs. Requiring stations to identify publishers to which information about core programs is being provided will allow parents and others to encourage other program guide publishers to include this information in their TV listings. As broadcasters are already required by our rules to provide information to program guide publishers, it should not be difficult for broadcasters simply to identify those publishers on their quarterly programming reports. We disagree with CME et al., however, that broadcasters should be required to indicate in their reports whether the program guides to which information was provided actually published this information. As NAB argues, tracking what was actually published could impose a significant burden on broadcasters. Once publishers that have been provided with information are identified by licensees in their reports, interested members of the public can monitor those publications and urge them to include educational children's program identifiers.

License Renewal Date

17. Finally, as CME et al. suggests, we will also add a question to FCC Form 398 requiring the station to indicate its license renewal date. This information is readily available to broadcasters and easy to provide, and will be useful to members of the public interested in monitoring station compliance.

Revised Form 398

18. We will amend § 73.3526 of the Commission's rules as set forth in FCC Form 398, Children's Television Programming Report, to reflect the changes discussed. We direct the Mass Media Bureau to revise FCC Form 398 accordingly and submit it to OMB for approval.

Final Regulatory Flexibility Analysis

19. The *R&O* amends § 73.3526(e)(11)(iii) of the Commission's rules to continue indefinitely the requirement that commercial broadcast television licensees file with the Commission, on an annual basis, their quarterly Children's Television Programming Reports (FCC Form 398). The Commission's rules currently state that such reports shall be filed on an annual basis for an experimental period of three years, from January 1998 through January 2000. Continuation of the filing requirement will permit the Commission to continue to enforce the Children's Television Act of 1990 (''CTA''), and its rules implementing the CTA, by monitoring the amount and quality of educational television programming for children and industry compliance with the Commission's children's educational programming requirements. The *R&O* also requires that the reports be filed with the Commission quarterly, at the time they are prepared, instead of annually, which will make available to the public more timely information about the educational and informational programming aired by the licensee during the preceding calendar quarter and planned to be aired during the succeeding quarter. Finally, the *R&O* also makes a number of revisions to FCC Form 398 to make the information in the reports clearer and more useful to the Commission and the public. Specifically, the *R&O* adds a ''Preemption Report'' to FCC Form 398 to be completed for each preempted core program during the quarter requesting information on the date of each preemption, if the program was rescheduled the date and time the program was aired, and the reason for the preemption. The revised form also asks whether promotional efforts were made to notify the public of the time and date the rescheduled program would air, and requires licensees to identify the program guide publishers provided information about the licensee's core educational programming. Finally, licensees must indicate on the revised form the station's next license renewal date. These measures are designed to permit us to continue to enforce the CTA and our rules implementing that statute, and to improve public access to information about licensee compliance with their obligations to provide educational and informational programming for children.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Apply

20. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small business concern'' under section 3 of the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

21. *Small TV Broadcast Stations.* The SBA defines small television

broadcasting stations as television broadcasting stations with $10.5 million or less in annual receipts. BIA Research Inc. reports that 784 out of 1221 commercial television stations (64%) have annual revenues less than $10.5 million. Thus, we estimate that 784 or fewer commercial TV broadcast stations are small businesses, as defined by the SBA.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

22. *The R&O* continues the requirement that commercial broadcast television stations file with the FCC a copy of their quarterly Children's Television Programming Reports on FCC Form 398. In addition, the *R&O* requires that these reports be filed on a quarterly basis, as they are prepared, rather than annually. Finally, the *R&O* makes a number of changes in FCC Form 398 to make the information in the reports clearer and more useful to the FCC and the public. Specifically, the *R&O* adds a ''Preemption Report'' to FCC Form 398 to be completed for each preempted core program during the quarter requesting information on the date of each preemption, if the program was rescheduled the date and time the program was aired, and the reason for the preemption. The revised form also asks whether promotional efforts were made to notify the public of the time and date the rescheduled program would air, and requires licensees to identify the program guide publishers provided information about the licensee's core educational programming. Finally, licensees must indicate on the revised form the station's next license renewal date.

Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

23. The *R&O* requires licensees to identify in their Children's Television Programming Reports the program guide publishers to whom information regarding the licensee's educational and informational children's programming was provided. Although commenters also advocated that licensees be required to state whether this information was actually published, the *R&O* declines to impose this additional obligation on licensees because we believe that this might have constituted a significant economic impact without an adequate resulting benefit. In addition, although commenters proposed requiring that licensees be required to identify in their reports the precise efforts made to publicize the existence and location of the reports as required by 47 CFR 73.3526(e)(11)(iii), this proposal was not adopted in the *R&O.*

Report to Congress

24. The Commission will send a copy of the *R&O,* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *R&O,* including the certification and FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *R&O,* certification, and FRFA (or summaries thereof) will also be published in the **Federal Register**. See 5 U.S.C. 604(b) and 605(b).

Ordering Clauses

25. Pursuant to authority contained in sections 4(i), 303, and 308 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, and 308, and the Children's Television Act of 1990, 47 U.S.C. 303a, 303b, part 73 of the Commission's rules, 47 CFR part 73, is amended as set forth.

26. Pursuant to the Congressional Review Act, 5 U.S.C. 801, *et seq.*, the amendments set forth shall be effective January 1, 2001. Children's Television Programming Reports for the fourth quarter of 2000, due to be filed with the Commission by January 10, 2001, should be completed using the current FCC Form 398. The Commission will revise its electronic version of FCC Form 398 to reflect the changes adopted herein. Reports for the first quarter of 2001, due to be filed by April 10, 2001, should be completed using the revised form.

27. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *R&O,* including the Initial and Final Regulatory Flexibility Act Analyses, to the Chief Counsel for the Small Business Administration.

28. Pursuant to 47 U.S.C. 155(c), the Chief, Mass Media Bureau, is *granted delegated authority* to implement the changes to Form 398 adopted in this *R&O.*

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rules

Part 73 of title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

2. Section 73.3526 is amended by revising paragraph (e)(11)(iii) to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

* * * * *

(e) * * *

(11) * * *

(iii) *Children's television programming reports.* For commercial TV broadcast stations, on a quarterly basis, a completed Children's Television Programming Report (''Report''), on FCC Form 398, reflecting efforts made by the licensee during the preceding quarter, and efforts planned for the next quarter, to serve the educational and informational needs of children. The Report for each quarter is to be placed in the public inspection file by the tenth day of the succeeding calendar quarter. By this date, a copy of the Report for each quarter is also to be filed electronically with the FCC. The Report shall identify the licensee's educational and informational programming efforts, including programs aired by the station that are specifically designed to serve the educational and informational needs of children, and it shall explain how programs identified as Core Programming meet the definition set forth in § 73.671(c). The Report shall include the name of the individual at the station responsible for collecting comments on the station's compliance with the Children's Television Act, and it shall be separated from other materials in the public inspection file. The Report shall also identify the program guide publishers to which information regarding the licensee's educational and informational programming was provided as required in § 73.673(b), as well as the station's license renewal date. These Reports shall be retained in the public inspection file until final action has been taken on the station's next license renewal application. Licensees shall publicize in an appropriate manner the existence and location of these Reports.

[FR Doc. 00–28612 Filed 11–8–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MM Docket No. 99–25; FCC 00–349]

Creation of Low Power Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document the Commission affirmed most of the *Report and Order* creating a new low power FM radio service. It affirmed the LP100 and LP10 classes created in the Report & Order and the 3rd adjacent channel protection for most stations. The Commission did change certain aspects of the rules created by the *Report & Order*, however, it created a procedure to resolve complaints from listeners of full power radio stations claiming unexpected interference from LPFM stations. The complaint procedures are intended to ensure that if any unexpected, significant 3rd adjacent channel interference problems are caused by the operation of a particular LPFM station, they can be resolved expeditiously. The Commission also preserved existing protection for those stations providing radio reading services for blind or low vision listeners. The Commission made other minor changes to ownership rules involving public safety and transportation organizations and schools.

EFFECTIVE DATE: Effective December 11, 2000.

FOR FURTHER INFORMATION CONTACT: Julie Barrie, (202) 418–2130, Policy and Rules Division, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order on Reconsideration* (*''MO&O''*), MM 99–25; FCC 00–349, adopted September 20, 2000; released September 28, 2000. The full text of the Commission's *MO&O* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room TW-A306), 445 12 St. S.W., Washington, D.C. The complete text of this *MO&O* may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857–3800, 1231 20th St., N.W., Washington, D.C. 20036.

Synopsis of Memorandum Opinion and Order

I. Background

1. In January, we adopted a *Report and Order* (*''R&O''*), 65 FR 7616 (February 15, 2000), establishing a low power FM radio service. We authorized this new service to provide opportunities for new voices to be heard, while at the same time preserving the integrity and technical excellence of existing FM radio service and safeguarding its transition to a digital transmission mode. In this *MO&O*, we dispose of petitions for reconsideration of the *R&O*, make certain changes to our rules, and provide certain clarifications of our rules.

2. In the *R&O*, the Commission authorized two new classes of FM radio service, known collectively as low power FM (LPFM). The LP100 class will consist of stations with a maximum power of 100 watts effective radiated power (ERP) at 30 meters antenna height above average terrain (HAAT), providing a signal level equivalent to the FM ''protected'' service (1 mV/m or 60 dBu) within a radius of approximately 3.5 miles. After a period of time sufficient to act on LP100 applications that are filed, the Mass Media Bureau will accept applications for LP10 stations. We are accepting applications for LP100 stations on a geographically staggered basis. *See* filing window schedule. The initial filing window for the first region closed June 8, 2000. The initial filing window for the fifth, and last, region is expected to be opened in May 2001. These stations will have a maximum power of 10 watts ERP at 30 meters HAAT, providing the same signal strength out to approximately 1 or 2 miles from the station's antenna. To avoid compromising existing FM radio service, given the new nature of the LPFM service, we imposed separation requirements for LPFM with respect to full power stations operating on co-, 1st—and 2nd—adjacent and intermediate frequency (IF) channels. Based on our engineers' technical analysis and careful review of other analyses submitted, we determined that 100-watt LPFM stations operating without 3rd adjacent channel separation requirements will not result in unacceptable new interference to the service of existing FM stations. We decided, therefore, not to impose 3rd adjacent channel separation requirements because doing so would unnecessarily and substantially restrict the number of LPFM stations that could be authorized, particularly in higher population areas.

3. We restricted LPFM service to noncommercial operations by noncommercial educational entities and public safety radio services. With certain narrow exceptions, we decided to restrict ownership to entities that have no attributable interest in any other broadcast station or other media subject to our ownership rules. We severely restricted the number of LPFM stations that a single entity can own and limited ownership to locally-based entities for the first two years. We determined not to permit the sale of an LPFM station. To resolve mutually exclusive applications, we decided to use a point system that favors local ownership and locally-originated programming, with time-sharing and successive license terms as tie-breakers. Finally, we have minimized the regulatory burdens imposed on these stations, consistent with their size and very localized operation.

4. In this *MO&O*, we generally affirm the decisions we reached in the *R&O*, although we make some changes and clarify certain aspects of our rules. As explained, we reject arguments by petitioners proposing more stringent channel separation requirements, as well as arguments in favor of relaxing those requirements. We adopt complaint and license modification procedures to ensure that if any unexpected, significant 3rd adjacent channel interference problems are caused by the operation of a particular LPFM station, it can be resolved expeditiously. We decline to modify the permissible power levels for the service. We modify the spacing standards adopted in the *R&O* to require that LPFM stations operating on 3rd adjacent channels protect stations operating radio reading services and, pending further study, will not authorize an LPFM station that would not be sufficiently geographically separated from any full-service FM station on a 3rd adjacent channel that operates a radio reading service as of the date of the adoption of this *MO&O*. We also decline to alter the noncommercial nature of the service. We affirm our decision to apply our character qualifications policy with respect to former illegal broadcasters. We increase the flexibility of the ownership rules for certain specific types of applicants: government, transportation and public safety entities, and universities. We provide clarifications on eligibility issues concerning Indian tribes, student stations, licensees in the Instructional Television Fixed Service (ITFS), and schools with multiple campuses. We affirm our tie-breaker criteria, with certain clarifications regarding the credit for programming that is locally originated. Finally, we address a number of questions and suggestions regarding individual elements of our rules.

II. Issue Analysis

A. Technical Rules

1. Second and Third Adjacent Channel Protection

5. In the *R&O*, we determined that it was not necessary to require that LPFM stations protect other full or low power FM stations operating on 3rd adjacent channels, *i.e.,* stations +/−600 KHz apart. Our decision on this issue was based on our finding that 100-watt LPFM stations operating on 3rd adjacent channels will not result in significant new interference to the service of existing FM stations. We concluded that any small amount of interference that may occur in individual cases would be outweighed by the benefits of new low power FM service. We also determined that the risk of interference from LPFM stations on 2nd adjacent channels may be somewhat higher than that from such operations on 3rd adjacent channels and therefore chose to retain 2nd adjacent channel protection requirements for LPFM stations.

6. These decisions were based on the substantial record of information and analyses on FM receiver performance characteristics that was developed in response to the *Notice of Proposed Rulemaking,* (*''NPRM''*), 64 FR 07577 (February 16, 1999). The record included three technical studies of FM receivers that were filed by commenting parties.

7. *3rd Adjacent Channel Protection.* NPR disagrees with our findings that any risk of interference from 100-watt LPFM stations operating on 3rd adjacent channels is small and that any such interference that does occur is, on balance, outweighed by the benefits of the new service. It argues that neither of these premises, nor our decision to reduce the existing FM interference protections, are supported by the record.

8. *Radio Reading Services.* In its petition, NPR requests that we provide additional interference protection for FM stations that operate radio reading services. Radio reading services, which provide access to printed news and other information sources for blind or print-disabled persons, are transmitted via FM station subcarrier (SCA) facilities.

9. *2nd Adjacent Channel Operation.* J. Rodger Skinner and UCC request that we reconsider our decision to apply 2nd adjacent channel protection requirements to LPFM stations and revise the rules to allow operation of LPFM stations without regard to 2nd adjacent channel separation. Skinner submits that our recent receiver tests, and the fact that no interference has been reported during the many years when short-spaced grandfathered full service stations were allowed to relocate without regard to 2nd or 3rd adjacent channel restrictions, are indicative that low power stations could operate on such channels without causing interference.

10. The existing FM interference protections, which are provided through spacing standards, are based on the following ratios: 20 dB co-channel D/U; 6 dB 1st adjacent channel D/U; −40 dB 2nd adjacent channel D/U for commercial FM stations and −20dB for noncommercial stations operating in the reserved FM band; −40 dB 3rd adjacent channel D/U. Receivers with the ability to reject interference at these ratios could be expected to provide interference free service within a station's 60 dBu contour service area. (Such radios might not, however, be able to receive service at all locations within that contour if they did not have sufficient sensitivity to receive signals at the 60 dBu level even in the absence of any interference.) Receivers with lower capabilities might experience interference within a station's service area, while those with higher capabilities might be able to reject interference at greater distances.

11. We believe that the principal issue is receiver performance, *i.e.* the ability of modern FM radios to reject unwanted 3rd adjacent channel signals. Laboratory tests allow examination of individual receiver performance under controlled conditions. This permits precise control of both desired and interfering signals so that the interference performance of individual receivers can be accurately determined. Field testing, on the other hand, is generally used to confirm models or estimates of how both desired and interfering signals propagate to individual locations. For example, in the case of FM radio, estimates of desired field strength are based on the F(50, 50) field strength chart contained in 47 CFR 73.333, while estimates of interference are based on the F(50, 10) field strength chart in that Section. These charts shows the distances from their respective transmitters at which the desired signal strength is predicted to exceed a given level at 50 percent of the locations 50 percent of the time and at which the interfering signal strength is predicted to exceed a given level at 50 percent of the locations 10 percent of the time. In simple terms, this approach assumes that the desired signal is at an average level while the interfering signal is at a much stronger level, *i.e.*, a ''worse case'' interference situation. These propagation and interference models have been used for many years for the FM radio and other services, and are independent of receiver performance. No questions have been raised by any of the parties in this proceeding regarding the propagation and interference models used for FM radio. Further, it is unclear as to what additional information, if any, field tests, would reveal about receiver performance, which is the principal technical issue in this matter affecting 3rd adjacent channel interference. Field test data, in our opinion, would merely assess the accuracy of our propagation predictions, rather than reveal information on receiver performance.

12. Stations on noncommercial reserved FM channels (channels 201–220, in the band 88–92 MHz) are authorized based on contour overlap, rather than the minimum spacing standards used for commercial stations. The contour overlap standards for noncommercial stations are the same as the D/U ratios on which the spacing standards for commercial stations are based, with one exception. The exception is that the D/U ratio for 2nd adjacent channel protection for noncommercial stations is −20 dB, whereas the 2nd adjacent channel spacing standard for commercial stations is based on the less stringent D/U ratio of −40 dB.

2. Regulatory Status of LPFM Stations

13. We decided in the *R&O* to require LPFM stations to protect existing full-power FM stations, translator, boosters, and vacant allotments, according to the separation requirements adopted, and not to protect LPFM stations from interference introduced by new or modified FM stations. We also decided that LPFM stations will be required to cease operation if they cause interference within the 3.16 mV/m contour of a subsequently authorized or modified FM station. One of our paramount goals in introducing LPFM service was that it not interfere with existing service. We believe that the rules we adopted strike a reasonable balance between the need to foster new service and our responsibility both to maintain the integrity of existing FM service and to allow for its expansion to better serve the public.

14. *Translators.* FM translator stations may not continue to operate if any interference occurs in areas where a full service FM station has a ''regularly used'' signal, including locations beyond the full service station's applicable protected contour. However, LPFM stations are only required to protect subsequently authorized full service FM stations if interference is created within the full service station's

70 dBu principal community contour. The Commission's decision permitting LPFM stations to continue operation if overlap occurs in an FM station's service area outside its 70 dBu contour was an attempt to balance the service needs of full service stations with the need for stability in the LPFM service. FM translators provide full service FM stations with a means of supplementing signal coverage made deficient due to terrain or other transmission issues, while LPFM stations will provide a new program origination service. Given the differing purposes of the LPFM and FM translator services we do not feel that it is necessary for both services to have identical interference protection requirements.

3. Modulation

15. In order to minimize the potential for interference from LPFM stations, the Commission concluded that LPFM stations would be required to meet current FM transmission standards. Additionally, in order to ensure that these standards are met, the *R&O* restricted LPFM stations to the use of FCC ''type certified'' transmitters.

16. In most cases, these standards will be met through the use of certified equipment without need for further adjustment by the LPFM licensee. LPFM stations will be required to adhere to the 200 kHz channel bandwidth applicable to full service stations, as well as the out-of-channel signal attenuation requirements in 47 CFR 73.317 [via reference in § 73.508], the center frequency drift limits in 47 CFR 73.1545(b), and the limits on modulation in 47 CFR 73.1570 (a) and (b).'' In this regard, we note that one of the rules modified in the *R&O*, inadvertently specified verification rather than certification procedures for LPFM stations. We are correcting the rules accordingly to correspond to our decisions in the *R&O*.

4. Cut-Off Date for Protection of Full Service Stations

17. The *R&O* adopted a nationwide filing window for LP100 applications and tentatively set the first window for May, 2000. The Commission directed the Mass Media Bureau to announce by Public Notice, (DA 00–621, released March 17, 2000) the opening of the first national window and to release this notice at least 30 days in advance. Subsequently, the Mass Media Bureau decided to accept LPFM applications in five separate filing windows to ''ensure the expeditious implementation of the LPFM service and to promote the efficient use of Commission resources.'' The *R&O* also established protection rights for both full service and low power stations. LPFM applications must protect all full service FM station applications on file as of the date of the public notice in accordance with the minimum distance separation requirements adopted in the *R&O*. Full service FM applications filed on or after the public notice date would be protected only to the extent that the applicant's 3.16 mV/m contour is affected by an LPFM facility.

18. In light of our decision to use multiple filing windows to implement the LPFM service, we clarify our LPFM cut-off rules. We will use the release date of each public notice announcing the opening of the next LP100 window as the ''cut-off'' date for protection of pending full service FM applications. Thus, LPFM applicants in subsequent filing windows will be required to protect all full service applications on file as of the date of the public notice for their particular window. This includes applications that may not have been protected in previous windows.

5. Protection of Cable Television Headend

19. In the *R&O*, the Commission made LPFM stations subject to the existing full service station requirements regarding the amelioration of blanketing interference. Cable headends are among the facilities covered by this rule.

6. Translators

20. As part of its overall plan to protect FM stations from interference, the Commission adopted FM translator/booster-LPFM station minimum distance separation requirements. Because FM translator and booster stations generally do not have specific class limitations, the separation requirements were determined by analyzing the 60 dBu contours of authorized stations and grouping them into three cohorts based on station power and height. Additionally, we also amended part 74 rules to require that FM translator and booster stations protect the 1 mV/m contour of LP100 stations.

21. *Protection of Class A TV, Low Power Television and Television Translator Stations Operating on TV Channel 6*. In order to protect TV Channel 6 stations from LPFM station interference, we adopted a rule (47 CFR 73.825) requiring LPFM stations proposing operation in the NCE portion of the FM Band (Channels 201–220) to meet minimum distance separation requirements with respect to TV Channel 6 stations. Section 73.825 does not specifically address Class A TV, low power television (LPTV) and television translator stations operating on TV Channel 6. Accordingly, we will amend § 73.825 to include additional minimum distance separation requirements which we believe will be adequate to protect the service provided by the Class A TV, LPTV and television translator facilities.

7. Spacing Table

22. An anomaly in the minimum distance separation requirements of 47 CFR 73.807(g) has come to our attention. Specifically, the tables specify greater 2nd adjacent channel spacing requirements to Canadian stations from LP10 stations than from LP100 stations. When considering low-powered facilities at very high signal strengths, the Commission's F(50,50) curves often must be used instead of its F(50,10) curves. However, in some cases the staff must utilize the ''free space equation'' formula to determine contour distances. ''In those cases where the distance calculated from the free space equation is greater than 5280 feet [one mile], but the F(50,50) curves show a distance of less than one mile, we use a distance of one mile.'' Although the staff properly used the treaty-required +20 dBu undesired-to-desired signal radio to determine 2nd adjacent channel interfering contours near the Canadian border area, the staff failed to account for the fact that, in cases where the free space equation yields a result greater than 1.6 kilometers (one mile), 1.6 kilometers must be used as the contour distance. We have recalculated the minimum separation distances for 2nd adjacent channel LP10 stations near the Canadian border and are amending § 73.807 accordingly. For the same reason, we are also amending the IF frequency separation requirements for Class LP100 stations with respect to Class A and Class D stations, and Class B stations in Puerto Rico and the U.S. Virgin Islands.

23. In addition to the anomaly in 47 CFR 73.807(g), we have determined that low power FM stations within Canada and Mexico had not been specifically protected from new domestic LPFM stations in the *R&O*. While these stations are protected by treaty, the *R&O* failed to include spacing tables explicitly protecting Canadian and Mexican low power FM Stations. To eliminate any uncertainty with respect to Canadian and Mexican stations, we are supplementing the international spacing tables specified in 47 CFR 73.807 to include specific distance separation requirements. To determine the spacings, we took the maximum facilities allowed for Canadian and Mexican FM translator stations, calculated the distance to the F(50,50)

protected contour, and added the distance to the F(50,10) interfering curve from the domestic LPFM station required to protect those stations. In doing so, we determined that Canadian low power FM stations should receive the same protections provided to Canadian Class A1 facilities. Therefore, the Class A1 spacings in 47 CFR 73.807(g)(1) and (g)(3) will also be used for protecting Canadian low power FM Stations. However, due to the differences in treaty requirements, Mexican low power FM stations require unique spacing distances, and 47 CFR 73.807(g)(2) and 73.807(g)(4) are amended accordingly.

8. Directional Antennas

24. In the *R&O*, we determined not to authorize directional antennas for LPFM stations. We concluded that directional antennas are unnecessary due to our reliance on a minimum distance separation methodology for interference protection, which assumes the use of a non-directional antenna. We also reasoned that authorizing only nondirectional antennas would simplify the preparation and processing of applications, thereby facilitating the expeditious implementation of the service.

25. As we stated in the *R&O*, there are compelling needs for the services that will be provided by LPFM stations. As part of a streamlined application process to expedite the authorization and implementation of the service, we prohibited the use of directional antennas by LPFM stations. We continue to believe that given the low power levels in the LPFM service, authorizing stations to limit power in particular directions would not generally yield benefits sufficient to offset our concerns about the complexities of directional antenna authorizations. Authorization of directional antennas entails the submission and staff evaluation of radiation patterns and related information. Applicants for directional FM station licenses are required to submit measurement data to verify the radiation characteristics of directional antennas, as installed. Station proposals involving non-directional antennas can be authorized more quickly and with much less information from applicants. Such antennas will also facilitate uniform signal coverage within an LPFM station's service contour. Moreover, the conservative distance separation requirements established for LPFM stations will ensure that other stations are adequately protected against interference without the use of directional antennas. For these reasons, we generally affirm our determination not to authorize directional antennas for LPFM stations.

26. As noted by the petitioners, however, we recognize that there could be tangible benefits to allowing the use of directional antennas, particularly for licensees whose service is generally tailored to directional signal paths.

27. We will make a limited exception to the prohibition of LPFM directional antennas and permit such antennas to be used only by public safety and transportation entities in connection with the operation of TIS services. However, under no circumstances will a specific antenna pattern be considered when determining compliance with our LPFM interference requirements with respect to other stations. Thus, we affirm that all such applicants must propose LPFM locations that comply with the LPFM distance separation requirements; requirements which assume use of a nondirectional antenna. Additionally, the use of a directional antenna will not affect a licensee's obligation to operate at its authorized ERP and will therefore not result in any extension of predicted coverage. Use of a high gain directional antenna will require a corresponding transmitter output power and transmission line loss that produces the authorized ERP.

28. TIS applicants wishing to utilize directional antennas will be limited to the use of a single ''off-the-shelf'' antenna with pattern characteristics pre-set by the manufacturer. A composite antenna consisting of more than one antenna mounted together may not be utilized. Nor will we permit multiple directional antennas and transmitters to be used from a single licensed facility. When filing an application for license to cover a construction permit (FCC Form 319), permittees will be required to certify that the gain of the specified antenna and transmitter power output (TPO), coupled with the necessary transmission line, produces the licensed ERP. For the purposes of station authorizations and our engineering database, all LPFM stations, including those of TIS stations, will be considered ''non-directional.'' Thus, we will not require applicants for station licenses to submit any data beyond antenna make and model. We will expect all licensees to install their antennas in accordance with the manufacturer's specifications.

8. Service Area Issues

29. In order to avoid the creation of interference to existing FM broadcast stations, the *R&O* adopted minimum distance separation requirements that were premised on the lack of prohibited overlap to each station class' maximum protected contour. In addition, in an effort to account for modifications to existing full service stations, and minimize interference, an additional 20 kilometer ''buffer'' was added to the co- and 1st adjacent channel separation requirements. Greater protection still was given to several superpowered stations operating within the reserved portion of the FM band. Finally, although a full service station proposing a facility modification could potentially be required to accept some interference from an operating LPFM station, the rules require that LPFM stations fully protect FM station modifications to their principal community (70 dBu) contours.

30. We wish to clarify 47 CFR 73.809 as it relates to determining interference caused by LPFM stations to full service stations operating on IF frequency channels. That section states that interference will be shown by demonstrating contour overlap based upon the interference ratios of 47 CFR 73.215. However, § 73.215 does not apply to IF frequency channel stations. Accordingly, we are amending § 73.809 to state that IF frequency channel interference will be determined via overlap of the 91 dBu F(50,50) (36 mV/m) contours. This contour was utilized to calculate the LPFM IF frequency channel spacing requirements.

31. All full service stations operating in the non-reserved band, regardless of facilities, must be protected under the provisions of 47 CFR 73.207 (distance separations based upon maximum class facilities) or § 73.215 (lesser separation requirements based upon the lack of contour overlap with maximum class facilities).

9. Digital Audio Broadcasting

32. The Commission's decision to retain 2nd adjacent channel LPFM protection requirements but eliminate 3rd adjacent channel standards was designed, in part, to ensure that the introduction of the LPFM service did not impede the development of in-band on-channel (IBOC) digital audio broadcasting (DAB) technologies.

B. Third Adjacent Channel Complaint and License Modification Procedure

33. Based on the Commission's technical analyses and its review of several independent studies submitted in this proceeding we decided not to require LPFM stations to provide 3rd adjacent channel protection to full power stations. As discussed above, no issues have been raised on reconsideration that have persuaded us to reconsider our findings and conclusions on this matter. We continue to believe that the risk of interference

from LPFM stations is small, and that the interference that may occur in individual cases would be vastly outweighed by the benefits of initiating a new service that will create new outlets for locally based community-oriented voices.

34. We concluded in the *R&O* that the licensing of LPFM stations on 3rd adjacent channels would not result in significant new interference to existing FM stations, *i.e.* that very few listeners would be able to detect additional interference as a result of commencement of LPFM service on a 3rd adjacent channel. Although we expect it to be the rare case where an LPFM station operating on a 3rd adjacent channel causes more than a *de minimis* level of interference within the service area of a full power station protected by the distance separation requirements for other channel relationships, such a result would be unacceptable if it were to occur. Accordingly, we conclude on reconsideration that it would be prudent to establish procedures that would encourage cooperation between the parties and permit the Commission to take prompt remedial action where a significant level of interference can be traced to the commencement of broadcasts by a new LPFM station. As a result of these new procedures, there may be circumstances where, contrary to what we said in the *R&O,* an LPFM station will be required to take steps to resolve complaints that its signal is interfering with the reception of a full power FM station even though the LPFM station is operating in accordance with the relevant rules.

35. This marks the first time that the Commission has departed from a purely ''predicted interference'' approach for an aural service that has program origination authority and that enjoys certain protections generally thought of as ''primary'' stations rights. Our willingness to do so is based on a unique combination of factors. Most importantly, we are confident about the technical conclusions we have reached in the proceeding. Specifically, we continue to believe that it is unlikely that more than a few listeners will detect any additional interference to the reception of an existing FM station at locations that would be entitled to protection under our full power third adjacent channel interference methodology. Thus, the post-construction ''actual interference'' complaint procedure we are establishing should not pose a significant threat to the viability or stability of the LPFM service.

36. Moreover, an efficient complaint procedure will promote the fullest interference-free use of the FM broadcast spectrum. At this time there are few, if any, full power FM station opportunities in most of the highly populated areas of the country. In fact, staff studies in this proceeding establish that there are no available FM channels for LP100 stations in a number of major markets. In many communities broadcasters have fully taken advantage of the Commission's policy of licensing efficient high-power stations that serve wide areas with limited technical preclusiveness. As a result, most Americans enjoy abundant radio service. LPFM is not, as some argue, in conflict with these principles. Rather it is a complementary way to serve the needs of communities within a mature broadcast service. It is grounded on the success of the Commission's licensing policies and is designed to efficiently match the little spectrum that remains with the demonstrable demand for locally based programming. We conclude that an efficient, limited complaint procedure fairly balances the interests of incumbent broadcasters against the benefits of fostering a new and different kind of radio service.

37. For purposes of the complaint process we will consider interference to occur whenever reception of a full power station is impaired by the operation of an LPFM station operating on a third adjacent channel station. We believe that it is unnecessary to adopt a more technically objective standard for determining whether a listener is experiencing ''actual'' interference. The ''any impairment'' standard has worked successfully over the past decade in the FM translator context. A particular listener's perception of signal impairment is dependent on many factors, including the receiver used, the programming, listener sound quality expectations, and listener auditory discrimination capabilities. As a result, we are reluctant to adopt a single ''objectionable interference'' standard. We are also concerned that this approach could add a level of factual complexity to the complaint process set forth below without any clear public interest justification.

38. The complaint process may be invoked where an LPFM station's transmission facilities are located inside the predicted 60 dBu contour of an existing full power FM station operating on a 3rd adjacent channel; that is, the 60 dBu contour corresponding to the station facilities that existed at the time construction of the LPFM station was authorized. That contour, which encompasses the area that would have been protected had a 3rd adjacent channel distance separation requirement been applied to LPFM stations, will bound the complaint area. With regard to LPFM protection of subsequently modified, upgraded, or new full-service FM stations, we will conform 3rd adjacent channel protection responsibilities to the generally applicable provisions in paragraph 66 of the *R&O* and as codified in 47 CFR 73.809. In this manner, operating LPFM stations will be permitted to interfere within the 60 dBu contour of a new or subsequently modified FM station, but not within such a station's 70 dBu ''city grade'' signal contour or principal community of license, as applicable (*see* discussion of service area issues). Complaints will be limited to receivers located at fixed, identifiable locations within the full power station's 60 dBu contour that are not more than one kilometer from the LPFM transmitter site. This geographic limitation is intended to address broadcasters' specific concern about the lack of LPFM station 3rd adjacent channel interference protection requirements. An LPFM station's interfering contour would extend slightly less than one kilometer from the LPFM transmitter site. Under the Commission's interference methodology for FM stations, 3rd adjacent channel interference is predicted where the undesired signal is more than 40 dB stronger than the desired signal level, *e.g.,* where the 3rd adjacent channel station's 100 dBu contour overlaps the desired signal level. The predicted 100 dBu contour of an LPFM station operating at maximum facilities would extend slightly less than one kilometer from the LPFM's transmitter site. The fixed receiver requirement is based on our desire to put in place a manageable and efficient complaint procedure. Mobile receiver complaints are generally much more difficult to identify and resolve. A mobile receiver, such as a car or portable radio, will encounter constantly varying signal strengths from various stations, resulting in a continuously variable potential for interference. The complaint must be received by either the LPFM or full power station within one year of the date on which the LPFM station commenced operation. This time frame is necessary to limit uncertainty regarding the potential modification or cancellation of an LPFM station's license and such station's financial obligation to resolve interference complaints. Any interference caused by the LPFM station should be detectable within one year after it commences

operation. The one-year cure period is similar to the technical requirement that each FM permittee resolve at its sole expense all blanketing interference complaints for a one-year period beginning with the commencement of program tests. The Commission will consider the modification of a station's license, including its cancellation, where as a result of the process described below, *bona fide* complaints from at least one percent of the households or thirty households, whichever is less, within the specified complaint area remain unresolved. The exact number of complaints necessary to satisfy this one-percent threshold can only be calculated on the basis of a specific antenna location of an allegedly interfering LPFM station. Assuming uniform population distribution within a community of license, the number of complaints necessary to reach this threshold would be, for example, approximately 19 in Charlottesville, Virginia, 29 in Minneapolis, Minnesota, and 12 in Frederick, Maryland. As noted, in no event would this procedure require more than 30 *bona fide* complaints. We do not anticipate this level of interference as a result of licensing LPFM stations on 3rd adjacent channels and will not consider it *de minimis*.

39. The first stage of the complaint process is designed to facilitate cooperative efforts between LPFM and full power FM licensees to identify and resolve *bona fide* interference complaints. A listener who believes that an LPFM station signal is interfering with the reception of a full power station may initiate the complaint procedure by providing the full power station an affidavit that describes the nature and location of the alleged interference. LPFM stations receiving complaints directly from listeners will be required to forward promptly such complaints to the affected full power FM stations. The full power FM station will be required to identify those complainants who reside at locations covered by these procedures, and provide copies of all such *bona fide* complaints to the LPFM station. Initially, an LPFM station will have the opportunity to resolve individual interference complaints. For example, an LPFM station may agree to provide new receivers to impacted listeners or to install filters at the receiver site. The LPFM station also may wish to consider a power reduction or other facility modification to alleviate the interference. We expect the LPFM station to make serious and diligent efforts to resolve each *bona fide* complaint received.

40. In the event that the LPFM station concludes that it is not the source of the interference and the number of unresolved complaints equals at least one percent of households or 30 households—whichever is less—in the complaint area, the LPFM and full power stations must cooperate in an ''on-off test'' to determine whether the interference is traceable to the LPFM station. To the extent necessary and where practical, we instruct our Enforcement Bureau field personnel to assist the parties in determining the source of the interference and identifying possible solutions. The Commission will consider a complaint resolved if the complainant does not reasonably cooperate with the LPFM station's investigatory and remedial efforts. If the licensees fail to reach agreement and the requisite number of complaints remain unresolved, the full power FM station licensee may request that the Commission initiate a proceeding to consider whether the LPFM station's license should be modified or cancelled. To expedite this process, LPFM licenses will include a condition permitting the Commission to modify or cancel such licenses where the Commission determines that the LPFM station is causing more than *de minimis* levels of 3rd adjacent channel interference to the reception of a full power FM station in the complaint area, *i.e.,* where the number of *bona fide* complaints meets or exceeds the one-percent-of-households or thirty-households threshold set forth above. This modification procedure will be conducted pursuant to 47 U.S.C. 316 and any such modification proceeding will be completed within 90 days of the filing of the complaint with the Commission, provided that the parties may seek extensions of this deadline consistent with our procedural rules. An LPFM station may stay this procedure by voluntarily ceasing operations and filing a ''displacement'' application on Form 318 within twenty days of the commencement of this modification procedure. A displacement application may propose a station relocation and/or channel change to any available channel. It will be treated as a ''minor'' change that is not subject to competing applications, provided that a requested LP100 station site change is not greater than 2 kilometers or, in the case of an LP10 station, 1 kilometer.

C. Classes of Service

41. The *R&O* established two classes of LPFM stations. LP100 stations will be authorized to operate with maximum facilities of 100 watts effective radiated power (ERP) at 30 meters (100 feet) antenna height above average terrain (HAAT). LP10 stations will be licensed with the equivalent of 10 watts ERP at 30 meters HAAT. The Commission declined to create a 1000 watt class of low power stations because of potential interference concerns, and because it determined that LP100 and LP10 stations would create more opportunities for community-oriented service.

42. Our conclusion that licensing these two classes of service at this time would serve the public interest is warranted by changes in the radio industry. In the past we have struck the balance in favor of licensing higher powered stations to ensure that large audiences were served. Now, when radio service is widely available throughout the country and very little spectrum remains available for new full-powered stations, we conclude that licensing very low powered stations will fill in the gaps in the spectrum that would otherwise go unused. This will maximize the use of the available spectrum, rather than create the inefficiencies we sought to avoid. In the past, we have declined to authorize low power FM radio broadcast stations because of our concern that they would ''preclude the establishment of more efficient, stable, full powered stations.'' At this time, however, we are creating an LPFM service that is designed to allow small stations to operate where full powered stations cannot. Moreover, we have adopted rules to ensure that the operation of LPFM stations does not undermine the technical integrity of the existing FM radio service. Consistent with this approach, we are licensing LP100 stations before LP10 stations. As we stated in the *R&O,* [w]e adopt this sequential process in order to provide the larger (100 watt) stations with their greater service areas the first opportunity to become established. Given that some LP10 stations can be sited where LP100 stations cannot, we expect that opportunities will remain for LP10 stations after the initial demand for LP100 stations has been accommodated. Additionally, our own resources will be better spent *first* advancing services to relatively greater areas.'' Our decision to begin licensing low power FM radio stations at this time is also in response to the dramatic changes in the radio industry during the last four years since our radio multiple ownership limits were relaxed pursuant to the 1996 Act. Given the substantial consolidation of radio station ownership in recent years, the need for adding

diverse voices to the airwaves has grown. Because we have concluded that taking this step will not undermine our spectrum efficiency goals, we affirm our decision to create these two new classes of FM radio service.

D. Noncommercial Nature of LPFM Service

43. In the *R&O,* we determined that only noncommercial educational entities would be eligible to hold LPFM licenses.

44. Our goals in establishing the LPFM service were to create opportunities for new voices on the airwaves and to allow local groups, including schools, churches, and other community-based organizations, to provide programming responsive to local community needs and interests. As discussed extensively in the *R&O,* although we considered the entrepreneurial opportunities a commercial LPFM service would create, we concluded that a noncommercial service would best serve the Commission's goals in this proceeding.

45. Specific questions were raised as to whether Indian tribes may apply for LPFM stations, or whether only their educational institutions may apply. As long as they meet the NCE criteria and other eligibility rules applicable to all applicants, Indian tribes may apply for LPFM construction permits. We have granted NCE radio station licenses to Indian tribes and to educational institutions operated by Indian tribes and thus, this LPFM eligibility rule follows current policy. We will apply the NCE criteria to Indian tribe applicants—and all applicants—in the same manner in LPFM as we have in the existing FM radio service.

E. Ownership and Eligibility

1. Local Ownership Restrictions

46. In the *R&O* we prohibited common ownership of more than one LPFM station in the same area and cross-ownership of *any* LPFM by any other broadcast station, including translator and low power television stations, as well as other media subject to our ownership rules. As discussed extensively in the *R&O,* we believe that strict ownership rules are an important mechanism for assuring the diversity of ownership that is so critical to this service. We concluded that the interest in bringing new voices to the airwaves would be best served by barring cross-ownership between LPFM licensees and existing broadcast owners and other media entities. We believe that the rules we have adopted for the LPFM service—*including* the strict cross ownership ban—will lead to more access by all segments of the population to the airwaves. We will, therefore, maintain the cross-ownership restrictions set forth in the *R&O.* As noted in the *R&O,* if a licensee of an AM station (or any other station) agrees to divest its interest in its license upon grant of the LPFM license, it may apply for an LPFM license.

2. National Ownership Limit

47. The Commission established a staged national ownership rule. For the first two years after a filing window opens, an entity may own only one LPFM station. After the first two years we will allow one entity to own up to five stations nationwide; after three years, we will allow an entity to own up to ten stations nationwide. The purpose of this staged approach is to foster diversity by initially disallowing common ownership of LPFM stations, but eventually permitting common ownership where local applicants fail to come forward. As noted, since adoption of the *R&O* we adopted staggered filing windows based on geographic regions. We clarify that this two year limitation—as well as other time periods tied to the opening of a filing window—will begin to run in a geographic region based on the opening of that region's filing window.

48. *Public Safety and Transportation.* In addition to NCEs, state or local governments or not-for-profit organizations that operate public safety or emergency services are also eligible owners for LPFM licenses.

49. We will allow government, public safety and transportation organizations to apply for more than one license, but they must designate a ''priority'' application among those applications. The ''priority'' application will undergo the usual selection process as outlined in the *R&O* whether or not it encounters mutually exclusive applicants. The other applications they submit will be dismissed if they are mutually exclusive with any other applications but will be eligible for grant in the absence of competing applications.

50. Thus, we will allow government, public safety and transportation organizations to apply for more than one license, but they must designate a ''priority'' application among those applications. The ''priority'' application will undergo the usual selection process as outlined in the *R&O* whether or not it encounters mutually exclusive applicants. The other applications they submit will be dismissed if they are mutually exclusive with any other applications but will be eligible for grant in the absence of competing applications.

51. *Schools with Multiple Campuses.* Several schools with multiple campuses sought clarification of the national ownership rules to permit the separate licensing of LPFM stations at several campuses. We believe the LPFM attribution exception should be expanded to cover separate school campuses in most cases, allowing schools to have LPFM stations on separate campuses notwithstanding our national ownership rule. This LPFM exception is inapplicable to full service NCE stations, for which there are no national ownership limits. Schools with multiple campuses applying for full service NCE stations are directed to the definition of attribution and the selection standards in 47 CFR 73.7000 and 73.7003. For example, if several high schools in an area seek LPFM licenses but are all governed by a local school board, the high schools can assert that they are local chapters of a large organization and can apply for their own licenses. If multiple campuses of the same university apply for LPFM licenses, they too would be considered separate local entities under that exception. The same principle will apply to charter schools that are a part of a larger school system but seek their own licenses.

3. University-Licensed Student-Run LPFM Stations

52. As noted, in the *R&O,* we determined that no broadcaster or other media entity subject to our ownership rules, or any party with an attributable interest in a broadcaster or media entity subject to our ownership rules, could hold an attributable ownership interest in an LPFM licensee. Moreover, we restricted local ownership, allowing an entity to own only one LPFM station in a community. We use the term ''community'' to refer to the very small area and population group that makes up a station's potential service area and audience. For purposes of the LPFM local ownership rules, we require that no entity own or have an attributable interest in two or more LPFM stations located within seven miles of each other. Finally, for purposes of our national ownership limits, an entity may own only one LPFM station during the first two years of LPFM service. While we will disallow common ownership of LPFM stations for the first two years of LPFM service, we will permit multiple ownership of LPFM stations nationally, up to a maximum of 10 LPFM stations over a phased-in period, to bring into use whatever low

power stations remain available but unapplied for.

53. Two petitioners ask us to create an exception to these LPFM multiple and cross-ownership rules to allow universities that hold full-power FM radio licenses to obtain LPFM licenses for student-run stations. Specifically, petitioners contend that our LPFM ownership rules preclude students from operating a university-licensed LPFM station where the university already holds licenses for radio broadcast stations, including NPR affiliated stations. Petitioners argue that students are not permitted to participate in the operation of these full-power stations and that our LPFM ownership rules deny students the opportunity to operate LPFM stations.

54. We will allow universities that hold licenses for full-power broadcast stations that are not student-run to apply for LPFM licenses for stations that would be managed and operated on a day-to-day basis by students, provided that they do not face any competing applications. We find that allowing this limited exception to our LPFM ownership rules will promote our goals of maximizing diversity of ownership in a community and providing a medium for new speakers, including students, to gain experience in the broadcast field. Accordingly, if a university's full-power station does not provide the university's students with a meaningful opportunity to participate in the management and operation of that station, we will allow the university to apply for a license for a student-run LFPM station on that campus. If a license is granted, the station must be managed and operated by students of the university, although as the licensee, the University must retain ultimate control of the station's operations. However, in those cases where a university already holds an attributable interest in a broadcast station, its LPFM application will be eligible for grant only if it does not face competing applications. If the university is a licensee and its LPFM application faces a competing application, the university's LPFM application will be dismissed. We believe this exception properly balances the interests of local groups in acquiring a first broadcast facility and of university licensees that desire to provide a distinct media outlet for students.

4. Time Periods for the Community-Based Requirement and for the National Ownership Cap

55. In the *R&O,* the Commission established a two-year time period during which only local, community-based applicants are eligible, and an entity can only own one station nationwide.

56. When deciding on the two-year time period for the community-based requirement, we weighed our interest in putting LPFM stations into the hands of local and diverse entities against our interest in ensuring that available spectrum does not go unused. As noted, we have adopted a staggered filing window approach for accepting LPFM applications based on geographic region. We clarify that the two-year period for the community-based requirement for each jurisdiction starts on the date of the filing window for that jurisdiction. Therefore, in Alaska, California, District of Columbia, Georgia, Indiana, Louisiana, Maine, Mariana Islands, Maryland, Oklahoma, Rhode Island and Utah, for which we opened a filing window on May 30, 2000, the two-year period began running on that date. In the remainder of the jurisdictions, in which LPFM filing windows have not yet opened, the two-year period has not yet begun to run. Thus, applicants in these jurisdictions that have not yet had a filing window will have additional time to organize and prepare their applications.

5. Foreign Ownership and Non-Stock Entities

57. Questions have arisen with respect to the application of statutory foreign ownership requirements to LPFM applicants and licensees. As we explained in the *NPRM*, all low-power facilities will be subject to the statutory requirements of Section 310(b) of the Act, which limits foreign ownership and voting interests in radio station licenses, including broadcast licenses. Sections 310 (b)(1) and (b)(2) prohibit the grant of a license to a foreign government or a representative of a foreign government; an alien or representative of an alien; or a corporation organized under the laws of a foreign government. While foreign parties may act as officers or directors of corporate licensees, Section 310(b)(3) prohibits foreign entities from owning or voting more than 20 percent of the capital stock of a broadcast licensee. If either the foreign ownership or voting interest in an applicant or licensee exceeds the 20 percent benchmark, we are required by law to revoke the license or refuse to grant the license application. In the Matter of Request for Declaratory Ruling Concerning the Citizenship Requirements of Sections 310 (b)(3) and (4) of the Communications Act of 1934, as amended, *Declaratory Ruling.* Section 310(b)(4), which limits foreign ownership in parent corporations, allows us to deny a license application, upon a determination that denial is in the public interest, where more than 25 percent of the parent corporation's capital stock is owned or voted by foreign entities. The Commission has determined that Section 310(b) applies not only to corporate interests, but also to partnership and other non-corporate interests. Thus, we will apply our foreign ownership rules and policies on a case-by-case basis to all entities that are LPFM applicants and licensees, guided by Commission precedent.

58. We recognize that many entities that will hold LPFM licenses will be non-stock corporations or other non-stock entities, and that non-stock entities do not have ''owners'' in the traditional sense. As the Commission has explained, the specific citizenship requirements of Section 310(b) reflect a deliberate judgment on the part of Congress to prevent undue foreign influence in broadcasting. Thus, for the purpose of determining whether a non-stock LPFM applicant or licensee complies with the statutory foreign ownership requirements, we will first consider the citizenship of those individuals who would have the ability, comparable to that of a traditional owner, to influence or control the licensee. In making these determinations we will be guided by Commission precedent.

59. An applicant or licensee must directly inform us that an ownership structure may or does in fact exceed the foreign ownership benchmarks in Section 310(b) of the Act.

6. Minority Broadcast Training Institutions

60. We agree that providing minority broadcast education would be a valuable use of the LPFM service, it is not the only valuable use. We believe our current eligibility rules will lead to the ownership of LPFM stations by a wide variety of groups, which will best promote our goals in this proceeding.

61. As we stated in the *R&O* in response to requests for preferences for entities controlled by minorities, the Commission is conducting fact-finding studies as to whether such preferences may be justified consistent with *Adarand.* Depending on the outcome of these studies, as well as our experience with LPFM, we will consider in the future whether to adjust our rules to facilitate participation of more minority-oriented organizations in the service.

7. Unlicensed Broadcasters

62. In the *R&O*, we determined that unauthorized broadcasters would not be eligible for LPFM licenses unless they could certify that they (1) promptly

ceased operation when directed by the Commission to do so if that direction was received prior to February 26, 1999, or (2) voluntarily ceased operation by February 26, 1999. In no event will an unlicensed broadcaster be eligible for an LPFM license if it continued illegally broadcasting after February 26, 1999. We have modified § 73.854 to make clear that no unlicensed broadcaster that continued to broadcast after February 26, 1999 will be eligible for an LPFM license. As discussed in the *R&O,* our rule on unlicensed broadcasters was based on our concern that past illegal broadcast operations reflect on the entity's proclivity to deal truthfully with the Commission and to comply with our rules and policies. We continue to believe that a party that continued to operate in contravention of an FCC direction to cease operations should not be eligible to apply for an LPFM license. Such a party should have ceased its illegal broadcast while pursuing any legal challenge to a Commission order. Any party ignoring our order has demonstrated an unwillingness to comply with the Commission's rules and thus should not be rewarded with an LPFM license.

F. Point System For Resolving Mutually Exclusive Applications

63. In the *R&O*, the Commission created a point system to determine selection among mutually exclusive applications. The point system includes three selection criteria: (1) Established community presence; (2) proposed operating hours; and (3) local program origination. The system will employ voluntary time-sharing as an initial tie-breaker; that is, tied applicants will have an opportunity to aggregate points by submitting time-share proposals. Successive license terms will be used as a final tie-breaker.

G. Other Issues

64. *Low Power Advisory Committee.* LPFM broadcasters and other interested parties are free, of course, to form a private organization to promote LPFM, support and assist its members and their operations, and address technical issues with each other and, where appropriate, raise them with the Commission.

65. *Automatic Program Review.* We are open to proposing, or considering proposals, to revise our rules after we have had experience with the service, we do not find it necessary to commit now to a review in the future.

66. *Transfers of Control—Nonstock Entities.* In the *R&O*, we established that LPFM licenses (and licensees) cannot be sold or transferred to another entity.

III. Conclusion

67. In this *MO&O*, we generally affirm the decisions we reached in the *R&O*. We do clarify certain rules to provide better guidance to the public, and make minor revisions to improve our procedures and the quality of the LPFM service, and to protect stations operating radio reading services, while at the same time preserving the quality of full power FM service. We also establish a process to ensure prompt resolution of certain interference problems in the unlikely event they occur.

IV. Procedural Matters and Ordering Clauses

68. Authority for issuance of this *MO&O* is contained in Sections 4(i), 303(r), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 403, and 405.

69. The actions taken in this *MO&O* have been analyzed with respect to the Paperwork Reduction Act of 1995, and found to impose no new or modified reporting and record-keeping requirements or burdens on the public.

70. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *MO&O* including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

71. Accordingly, the petitions for reconsideration or clarification listed below are granted to the extent provided herein and otherwise are denied pursuant to Sections 4(i), 303(r), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 403, and 405, and § 1.429(i) of the Commission's rules, 47 CFR 1.429(i).

72. The Motion of The Amherst Alliance *et al.* for a Decision on the Motion for Reconsideration of the Amherst Alliance filed June 5, 2000, and the Motion of Don Shellhardt *et al.* for a Decision on the Motion for Reconsideration of Don Schellhardt filed June 5, 2000, are to the extent provided herein dismissed as untimely and moot pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 403, and 405, and §§ 1.429(d) and (i) of the Commission's rules, 47 CFR 1.429(d) and (i).

73. The Commission's rules are amended as set forth. The provisions of this *MO&O* and the Commission's rules, as amended, shall become effective 30 days after publication in the **Federal Register**.

V. Supplemental Final Regulatory flexibility analysis

74. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM* and a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the *R&O*. The Commission sought written public comment on the proposals in the *NPRM* and the *R&O*, including comment on the IRFA and FRFA. No comments were received in response to the IRFA and the one comment received in response to the FRFA is addressed below. This present Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) conforms to the RFA.

Need for, and Objectives of, the MO&O

75. In the *R&O*, the Commission adopted a 100-watt class (LP100) and a 10-watt class (LP10) of small radio stations. Because of the predicted lower construction and operational costs of LPFM stations as opposed to full power facilities, the Commission expects that small entities would be expected to have few economic obstacles to becoming LPFM licensees. Therefore, as discussed in the *R&O* and the FRFA, this new service may serve as a vehicle for small entities and under-represented groups (including women and minorities) to gain valuable broadcast experience and to add their voices to their local communities. The Commission received petitions for reconsideration of the *R&O* that requested reconsideration of a variety of issues. This *MO&O* resolves those issues.

76. We do not change most of the determinations made in the *R&O*. We do, however, adopt the following few changes. We adopt complaint and license modification procedures to ensure that if any unexpected, significant 3rd adjacent channel interference problems are caused by the operation of a particular LPFM station, it can be resolved expeditiously. We modify the spacing standards adopted in the *R&O* to require that LPFM stations operating on 3rd adjacent channels protect stations operating radio reading services and we increase the flexibility of the ownership rules for certain specific types of applicants.

Summary of Significant Issues Raised by Public Comments in Response to the FRFA

77. J. Rodger Skinner (Skinner), who submitted one of the original Petitions for Rulemaking regarding LPFM on February 5, 1998, contends in his Comments that the *R&O*'s FRFA

analysis was flawed in claiming that the institution of LPFM service would ''create significant opportunities for new small businesses.'' Skinner argues that the rejection of commercial service, the imposition of 3rd adjacent channel separations and the refusal to include 1000 watt stations undercut the Commission's expectation of new stations in the LPFM service. His argument, however, that the alternative resolutions he proposes were not considered and their rejection explained is mistaken. Both the *R&O* and the *MO&O* address each issue that he raises. In instituting this new LPFM service and in determining the rules that will govern it, we were concerned with the impact of our rules on small businesses, and took many steps to ensure the availability of this service to new entities. For instance, we adopted strict ownership limitations, made electronic filing voluntary, and refrained from main studio requirements for LPFM stations. At the same time, we explicitly weighed the best manner in which to achieve our goals in protecting existing service and creating this service against the benefits of commercial service, less stringent interference protection and higher power limits. Skinner's argument that small local businesses will be deprived of a potential economical advertising outlet also is insufficient to outweigh the reasons for our determination to make LPFM a strictly noncommercial service.

Description and Estimate of the Number of Small Entities to Which Rules Will Apply

78. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 per cent) are small entities.

79. The SBA defines a radio broadcasting station that has $5 million or less in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than $5 million in revenue in 1992. Official Commission records indicate that 11,334 individual radio stations were operating in 1992. As of September 30, 1999, Commission records indicate that 12,615 radio stations were operating, of which 7,832 were FM stations.

80. The rules will apply to a new category of FM radio broadcasting service. It is not known how many entities may seek to obtain a low power radio license. Nor do we know how many of these entities will be small entities. We note, however, that in the eighteen months since we issued the *NPRM*, the Commission's LPFM website has received approximately 100,000 hits, demonstrating the interest of individuals and groups in operating such a facility. In addition, we expect that, due to the small size of low power FM stations, small entities would generally have a greater interest than large ones in acquiring them.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

81. Most of the provisions of the *R&O* are unchanged by the *MO&O*. As noted in the *R&O*, the new service will require the collection of information for the purposes of processing applications for (among other things) initial construction permits, assignments and transfers, and renewals. We will also require lower power radio stations to comply with some of the reporting, recordkeeping, and other compliance requirements of full power radio broadcasters.

82. The portions of the *R&O* that were altered by the *MO&O* follow: (1) Radio reading services will be protected on the 3rd adjacent channel, (2) corrections were made to the spacing table, (3) a complaint procedure was added, (4) transportation entities will be permitted to hold multiple stations in certain instances, and (5) an ownership exception was created for university-licensees of low power radio stations. We do not anticipate that these changes will result in any changes to the reporting and recordkeeping requirements of LPFM licensees.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

83. The RFA requires agencies to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

84. The Commission believes that the LPFM service is likely to create significant opportunities for new small businesses. None of the changes made by the *MO&O* alter that belief. This *MO&O* alters the LPFM rules by allowing an expedited complaint process, creating additional interference protection for radio reading services, and increasing flexibility for specific licensees (university and public safety entities). The Commission believes that none of these revisions will have a significant economic impact on a substantial number of small entities. However, in an abundance of caution we will examine any potential impact to potential LPFM licensees.

85. The Commission does not anticipate that LPFM service will cause interference to existing stations. Due to concern expressed by parties about potential interference, however, the Commission has adopted complaint and license modification procedures to ensure that if any unexpected, significant 3rd adjacent channel interference problems are caused by the operation of a particular LPFM station, they can be resolved expeditiously. We believe this process will assist small entities by providing resolution to problems without delays and the potential for incurring legal and consulting expenses.

86. The Commission offered additional protection to the radio reading services, pending its analysis of a Commission study conducted to assess radio reading service's performance as compared with other receivers. While

awaiting the results of the study, the Commission will not license LPFM stations on 3rd adjacent channels to existing stations with radio reading services. Because radio reading services provide such a valuable service, we have modified the rules to assure that interference to radio reading services does not occur. The only other alternative considered would have been to leave the rules as originally drafted in the *R&O*. We decided against that alternative until such a time as the Commission can confirm that no unacceptable interference would occur.

87. The Commission makes a few other changes to the *R&O*. We allow transportation and public safety entities to hold multiple LPFM stations in certain instances and create an ownership exception for university-licensees of low power radio stations. Petitioners showed the Commission that these exceptions were merited based on the specific circumstances of these potential licensees. The only other alternative was to leave the rules as adopted in the *R&O*; to do so would not have accounted for the beneficial service, and unique circumstances, of particular applicants.

Report to Congress

88. The Commission will send a copy of the *MO&O*, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the SBREFA. In addition, the Commission will send a copy of the *MO&O*, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *MO&O* and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**.

VI. Filing Schedule

89. The country has been divided into five groups of states accepting LPFM applications. The FCC has accepted applications from the first and second groups of states:

90. 1st: Alaska, California, District of Columbia, Georgia, Indiana, Louisiana, Maine, Mariana Islands, Maryland, Oklahoma, Rhode Island, Utah.

91. 2nd: Connecticut, Illinois, Kansas, Michigan, Minnesota, Mississippi, Nevada, New Hampshire, Puerto Rico, Virginia, Wyoming.

92. The remaining three groups of states' LPFM applications are anticipated to be accepted as follows:

93. 3rd: American Samoa, Colorado, Delaware, Hawaii, Idaho, Missouri, New York, Ohio, South Carolina, South Dakota, Wisconsin (Public Notice October 2000; filing window: November 2000).

94. 4th: Arizona, Florida, Iowa, New Jersey, North Dakota, Oregon, Tennessee, Texas, U.S. Virgin Islands, Vermont, West Virginia (Public Notice January 2001; filing window: February 2001).

95. 5th: Alabama, Arkansas, Guam, Kentucky, Massachusetts, Montana, Nebraska, New Mexico, North Carolina, Pennsylvania, Washington (Public Notice April 2001; filing window: May 2001).

List of Subjects in 47 CFR Part 73 and 74

Radio broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Low Power FM Service Rule Modifications

Part 73 of title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

2. Section 73.209(c) is revised to read as follows:

§ 73.209 Protection from interference.

* * * * *

(c) Permittees and licensees of FM stations are not protected from interference which may be caused by the grant of a new LPFM station or of authority to modify an existing LPFM station, except as provided in subpart G of this part.

3. Section 73.514 is revised to read as follows:

§ 73.514 Protection from interference.

Permittees and licensees of NCE FM stations are not protected from interference which may be caused by the grant of a new LPFM station or of authority to modify an existing LPFM station, except as provided in subpart G of this part.

4. In § 73.807, the undesignated text, paragraphs (a), (b), (c), (c)(1), (c)(2), the note to paragraphs (a), (b), and (c), paragraphs (g)(1) through (g)(4) and (g)(6) are revised to read follows:

§ 73.807 Minimum distance separation between stations.

Minimum separation requirements for LP100 and LP10 stations, as defined in §§ 73.811 and 73.853, are listed in the following paragraphs. An LPFM station will not be authorized unless these separations are met. Minimum distances for co-channel and first-adjacent channel are separated into two columns. The left-hand column lists the required minimum separation to protect other stations and the right-hand column lists (for informational purposes only) the minimum distance necessary for the LPFM station to receive no interference from other stations assumed to operating at the maximum permitted facilities for the station class. For second-adjacent channels and IF channels, the required minimum distance separation is sufficient to avoid interference received from other stations.

(a)(1) An LP100 station will not be authorized initially unless the minimum distance separations in the following table are met with respect to authorized FM stations, applications for new and existing FM stations filed prior to the release of the public notice announcing an LPFM window period for LP100 stations, authorized LP100 stations, LP100 station applications that were timely-filed within a previous window, and vacant FM allotments. LP100 stations are not required to protect LP10 stations. LPFM modification applications must either meet the distance separations in the following table or, if short-spaced, not lessen the spacing to subsequently authorized stations.

Station class protected by LP100	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second-adjacent channel minimum separation (km)—required	I.F. channel minimum separations—10.6 or 10.8 MHz
	Required	For no interference received from max. class facility	Required	For no interference received from max. class facility		
LP100	24	24	14	14	0	0
D	24	24	13	13	6	3

Station class protected by LP100	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second-adjacent channel minimum separation (km)—required	I.F. channel minimum separations—10.6 or 10.8 MHz
	Required	For no interference received from max. class facility	Required	For no interference received from max. class facility		
A	67	92	56	56	29	6
B1	87	119	74	74	46	9
B	112	143	97	97	67	12
C3	78	119	67	67	40	9
C2	91	143	80	84	53	12
C1	111	178	100	111	73	20
C	130	203	120	142	93	28

(a)(2) LP100 stations must satisfy the second-adjacent channel minimum distance separation requirements of paragraph (a)(1) of this section with respect to any third-adjacent channel FM station that, as of September 20, 2000 (the adoption date of this *MO&O*) broadcasts a radio reading service via a subcarrier frequency.

(b)(1) An LP10 station will not be authorized unless the minimum distance separations in the following table are met with respect to authorized FM stations, applications for new and existing FM stations filed prior to the release of the public notice announcing an LPFM window period for LP10 stations, vacant FM allotments, or LPFM stations.

Station class protected by LP100	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second-adjacent channel minimum separation (km)—required	I.F. channel minimum separations—10.6 or 10.8 MHz
	Required	For no interference received from max. class facility	Required	For no interference received from max. class facility		
LP100	16	22	10	11	0	0
LP10	13	13	8	8	0	0
D	16	21	10	11	6	2
A	59	90	53	53	29	5
B1	77	117	70	70	45	8
B	99	141	91	91	66	11
C3	69	117	64	64	39	8
C2	82	141	77	81	52	11
C1	103	175	97	108	73	18
C	122	201	116	140	92	26

(b)(2) LP10 stations must satisfy the second-adjacent channel minimum distance separation requirements of paragraph (b)(1) of this section with respect to any third-adjacent channel FM station that, as of September 20, 2000 (the adoption date of this *MO&O*) broadcasts a radio reading service via a subcarrier frequency.

(c) In addition to meeting or exceeding the minimum separations for Class LP100 and Class LP10 stations in paragraphs (a) and (b) of this section, new LP100 and LP10 stations will not be authorized in Puerto Rico or the Virgin Islands unless the minimum distance separations in the following tables are met with respect to authorized or proposed FM stations:

(1) LP100 stations in Puerto Rico and the Virgin Islands:

Station class protected by LP100	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second-adjacent channel minimum separation (km)—required	I.F. channel minimum separations—10.6 or 10.8 MHz
	Required	For no interference received from max. class facility	Required	For no interference received from max. class facility		
A	80	111	70	70	42	9
B1	95	128	82	82	53	11
B	138	179	123	123	92	19

(2) LP10 stations in Puerto Rico and the Virgin Islands:

Station class protected by LP100	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second-adjacent channel minimum separation (km)—required	I.F. channel minimum separations—10.6 or 10.8 MHz
	Required	For no interference received from max. class facility	Required	For no interference received from max. class facility		
A	72	108	66	66	42	8
B1	84	125	78	78	53	9
B	126	177	118	118	92	18

Note to paragraphs (a), (b), and (c): Minimum distance separations towards ''grandfathered'' superpowered Reserved Band stations are as specified.

Full service FM stations operating within the reserved band (Channels 201–220) with facilities in excess of those permitted in § 73.211(b)(1) or § 73.211(b)(3) shall be protected by LPFM stations in accordance with the minimum distance separations for the nearest class as determined under § 73.211. For example, a Class B1 station operating with facilities that result in a 60 dBu contour that exceeds 39 kilometers but is less than 52 kilometers would be protected by the Class B minimum distance separations. Class D stations with 60 dBu contours that exceed 5 kilometers will be protected by the Class A minimum distance separations. Class B stations with 60 dBu contours that exceed 52 kilometers will be protected as Class C1 or Class C stations depending upon the distance to the 60 dBu contour. No stations will be protected beyond Class C separations.

* * * * *

(g) *International considerations within the border zones.* (1) Within 320 km of the Canadian border, LP100 stations must meet the following minimum separations with respect to any Canadian stations:

Canadian station class	Co-channel (km)	First-adjacent channel (km)	Second-adjacent channel (km)	Third-adjacent channel (km)	Intermediate frequency (IF) channel (km)
A1 & Low Power	45	30	21	20	4
A	66	50	41	40	7
B1	78	62	53	52	9
B	92	76	68	66	12
C1	113	98	89	88	19
C	124	108	99	98	28

(2) Within 320 km of the Mexican border, LP100 stations must meet the following separations with respect to any Mexican stations:

Mexican station class	Co-channel (km)	First-adjacent channel (km)	Second-third adjacent channel (km)	Intermediate frequency (IF) channel (km)
Low Power	27	17	9	3
A	43	32	25	5
AA	47	36	29	6
B1	67	54	45	8
B	91	76	66	11
C1	91	80	73	19
C	110	100	92	27

(3) Within 320 km of the Canadian border, LP10 stations must meet the following minimum separations with respect to any Canadian stations:

Canadian station class	Co-channel (km)	First-adjacent channel (km)	Second-adjacent channel (km)	Third-adjacent channel (km)	Intermediate frequency (IF) channel (km)
A1 & Low Power	33	25	20	19	3
A	53	45	40	39	5
B1	65	57	52	51	8
B	79	71	67	66	11
C1	101	93	88	87	18
C	111	103	98	97	26

(4) Within 320 km of the Mexican border, LP10 stations must meet the following separations with respect to any Mexican stations:

Mexican station class	Co-channel (km)	First-adjacent channel (km)	Second-third adjacent channel (km)	Intermediate frequency (IF) channel (km)
Low Power	19	13	9	2
A	34	29	24	5
AA	39	33	29	5
B1	57	50	45	8
B	79	71	66	11
C1	83	77	73	18
C	102	96	92	26

* * * * *

(6) The Commission will initiate international coordination of a LPFM proposal even where the above Canadian and Mexican spacing tables are met, if it appears that such coordination is necessary to maintain compliance with international agreements.

5. Section 73.809 paragraphs (a), (b) and (c) are revised to read as follows:

§ 73.809 Interference protection to full service FM stations.

(a) It shall be the responsibility of the licensee of an LPFM station to correct at its expense any condition of interference to the direct reception of the signal of any subsequently authorized commercial or NCE FM station that operates on the same channel, first-adjacent channel, second-adjacent channel or intermediate frequency (IF) channels as the LPFM station, where interference is predicted to occur and actually occurs within:

(1) The 3.16 mV/m (70 dBu) contour of such stations;

(2) The community of license of a commercial FM station; or

(3) Any area of the community of license of an NCE FM station that is predicted to receive at least a 1 mV/m (60 dBu) signal. Predicted interference shall be calculated in accordance with the ratios set forth in §§ 73.215(a)(1) and 73.215(a)(2). Intermediate Frequency (IF) channel interference overlap will be determined based upon overlap of the 91 dBu F(50,50) contours of the FM and LPFM stations. Actual interference will be considered to occur whenever reception of a regularly used signal is impaired by the signals radiated by the LPFM station.

(b) An LPFM station will be provided an opportunity to demonstrate in connection with the processing of the commercial or NCE FM application that interference as described in paragraph (a) of this section is unlikely. If the LPFM station fails to so demonstrate, it will be required to cease operations upon the commencement of program tests by the commercial of NCE FM station.

(c) Complaints of actual interference by an LPFM station subject to paragraphs (a) and (b) of this section must be served on the LPFM licensee and the Federal Communications Commission, attention Audio Services Division. The LPFM station must suspend operations within twenty-four hours of the receipt of such complaint unless the interference has been resolved to the satisfaction of the complainant on the basis of suitable techniques. An LPFM station may only resume operations at the direction of the Federal Communications Commission. If the Commission determines that the complainant has refused to permit the LPFM station to apply remedial techniques that demonstrably will eliminate the interference without impairment of the original reception, the licensee of the LPFM station is absolved of further responsibility for the complaint.

* * * * *

12. Section 73.810 is added to read as follows:

§ 73.810. Third adjacent channel complaint and license modification procedure.

(a) An LPFM station is required to provide copies of all complaints alleging that the signal of such LPFM station is interfering with or impairing the reception of the signal of a full power station to such affected full power station.

(b) A full power station shall review all complaints it receives, either directly or indirectly, from listeners regarding alleged interference caused by the operations of an LPFM station. Such full power station shall also identify those that qualify as *bona fide* complaints under this section and promptly provide such LPFM station with copies of all *bona fide* complaints. A *bona fide* complaint:

(i) Is a complaint alleging third adjacent channel interference caused by an LPFM station that has its transmitter site located within the predicted 60 dBu contour of the affected full power station as such contour existed as of the date the LPFM station construction permit was granted;

(ii) Must be in the form of an affidavit, and state the nature and location of the alleged interference;

(iii) Must involve a fixed receiver located within the 60 dBu contour of the affected full power station and not more than one kilometer from the LPFM transmitter site; and

(iv) Must be received by either the LPFM or full power station within one year of the date on which the LPFM station commenced broadcasts with its currently authorized facilities.

(c) An LPFM station will be given a reasonable opportunity to resolve all interference complaints. A complaint will be considered resolved where the complainant does not reasonably cooperate with an LPFM station's remedial efforts.

(d) In the event that the number of unresolved complaints plus the number of complaints for which the source of interference remains in dispute equals at least one percent of the households within one kilometer of the LPFM transmitter site or thirty households, whichever is less, the LPFM and full power stations must cooperate in an ''on-off'' test to determine whether the interference is traceable to the LPFM station.

(e) If the number of unresolved and disputed complaints exceeds the numeric threshold specified in subsection (d) following an ''on-off'' test, the full power station may request that the Commission initiate a proceeding to consider whether the LPFM station license should be modified or cancelled, which will be completed by the Commission within 90 days. Parties may seek extensions of the 90 day deadline consistent with Commission rules.

(f) An LPFM station may stay any procedures initiated pursuant to paragraph (e) of this section by voluntarily ceasing operations and filing an application for facility modification within twenty days of the commencement of such procedures.

5. Section 73.816 is revised to read as follows:

§ 73.816 Antennas.

(a) Permittees and licensees may employ nondirectional antennas with horizontal only polarization, vertical only polarization, circular polarization or elliptical polarization.

(b) Directional antennas will not be authorized and may not be utilized in the LPFM service, except as provided in paragraph (c) of this section.

(c) Public safety and transportation permittees and licensees, eligible pursuant to § 73.853(a)(ii), may utilize directional antennas in connection with the operation of a Travelers' Information Service (TIS) provided each LPFM TIS station utilizes only a single antenna with standard pattern characteristics that are predetermined by the manufacturer. In no event may composite antennas (i.e. antennas that consist of multiple stacked and/or phased discrete transmitting antennas) and/or transmitters be employed.

(d) LPFM TIS stations will be authorized as nondirectional stations. The use of a directional antenna as provided for in paragraph (c) of this section will not be considered in the determination of compliance with any requirements of this part.

6. Section 73.825 is revised to read as follows:

§ 73.825 Protection to reception of TV channel 6.

(a) LPFM stations will be authorized on Channels 201 through 220 only if the pertinent minimum separation distances in the following table are met with respect to all full power TV Channel 6 stations.

FM channel number	Class LP100 LP100 to TV channel 6 (km)	Class LP10 to TV channel 6 (km)
201	140	136
202	138	134
203	137	133
204	136	133
205	135	132
206	133	131
207	133	131
208	133	131
209	133	131
210	133	131
211	133	131
212	132	131
213	132	131
214	132	130
215	131	130
216	131	130
217	131	130
218	131	130
219	130	130
220	130	130

(b) LPFM stations will be authorized on Channels 201 through 220 only if the pertinent minimum separation distances in the following table are met with respect to all low power TV, TV translator, and Class A TV stations authorized on TV Channel 6.

FM channel number	Class LP100 to LPTV channel 6 (km)	Class PL10 to LPTV channel 6 (km)
201	98	93
202	97	92
203	95	91
204	94	91
205	93	90
206	91	90
207	91	89
208	91	89
209	91	89
210	91	89
211	91	89
212	90	89
213	90	89
214	90	89
215	90	89
216	89	89
217	89	89
218	89	89
219	89	89
220	89	88

7. Section 73.827 is added to read as follows:

§ 73.827 Interference to the input signals of FM translator or FM booster stations.

(a) An authorized LPFM station will not be permitted to continue to operate if an FM translator or FM booster station demonstrates that the LPFM station is causing actual interference to the FM translator or FM booster station's input signal, provided that the same input signal was in use at the time the LPFM station was authorized.

(b) Complaints of actual interference by an LPFM station subject to paragraph (a) of this section must be served on the LPFM licensee and the Federal Communications Commission, attention Audio Services Division. The LPFM station must suspend operations upon the receipt of such complaint unless the interference has been resolved to the satisfaction of the complainant on the basis of suitable techniques. Short test transmissions may be made during the period of suspended operation to check the efficacy of remedial measures. An LPFM station may only resume full operation at the direction of the Federal Communications Commission. If the Commission determines that the complainant has refused to permit the LPFM station to apply remedial techniques that demonstrably will eliminate the interference without impairment of the original reception, the licensee of the LPFM station is absolved of further responsibility for the complaint.

8. Section 73.854 is revised to read as follows:

§ 73.854 Unlicensed operations.

No application for an LPFM station may be granted unless the applicant certifies, under penalty of perjury, to one of the following statements:

(a) Neither the applicant, nor any party to the application, has engaged in any manner including individually or with persons, groups, organizations or other entities, in the unlicensed operation of any station in violation of section 301 of the Communications Act of 1934, as amended, 47 U.S.C. 301.

(b) To the extent the applicant or any party to the application has engaged in any manner, individually or with other persons, groups, organizations or other entities, in the unlicensed operation of a station in violation of section 301 of the Communications Act of 1934, as amended, 47 U.S.C. 301, such an engagement:

(1) Ceased voluntarily no later than February 26, 1999, if not previously directed by the FCC to cease operation; or

(2) Ceased operation within 24 hours of being directed by the FCC to terminate unlicensed operation of any station but in no event later than February 26, 1999.

9. In § 73.855, paragraph (b) introductory text is revised and paragraph (b)(4) is added to read as follows:

§ 73.855 Ownership limits.

* * * * *

(b) Except as provided in paragraph (b)(4) of this section, nationwide ownership limits will be phased in according to the following schedule:

* * * * *

(4) Not-for-profit organizations and governmental entities with a public safety purpose may be granted multiple licenses only if:

(i) One of the multiple applications is submitted as a priority application, and;

(ii) The remaining non-priority applications do not face a mutually exclusive challenge.

10. Section 73.860 paragraphs (a) and (b) are revised to read as follows:

§ 73.860 Cross ownership.

(a) Except as provided in paragraph (b) of this section, no license for an LPFM station shall be granted to any party if the grant of such authorization will result in the same party holding an attributable interest in any other non-LPFM broadcast station, including any FM translator or low power television station, or any other media subject to our broadcast ownership restrictions.

(b) A party with an attributable interest in a broadcast radio station must divest such interest prior to the commencement of operations of an LPFM station in which the party also holds an interest unless such party is a college or university that can certify that the existing broadcast radio station is not student run. This exception applies only to parties that;

(i) Are accredited educational institutions, and;

(ii) Own attributable interest in non-student run broadcast stations;

(iii) Apply for an authorization for an LPFM station that will be managed and operated on a day-to-day basis by students of the accredited educational institution; and

(iv) Do not face competing applications for the LPFM authorization.

* * * * *

11. Section 73.870 paragraph (c) is revised to read as follows:

§ 73.870 Processing of LPFM broadcast station applications.

* * * * *

(c) Applications subject to paragraph (b) of this section that fail to meet the § 73.807 minimum distance separations with respect to all applications and facilities in existence as the date of the pertinent public notice in paragraph (b) of this section other than to LPFM station facilities proposed in applications filed in the same window, will be dismissed without any opportunity to amend such applications.

* * * * *

12. Section 73.872 is revised to read as follows:

§ 73.872(b)(3) Selection procedure for mutually exclusive application.

* * * * *

(b)* * *

(3) *Local program origination.* The applicant must pledge to originate locally at least eight hours of programming per day. For purposes of this criterion, local origination is the production of programming, by the licensee, within ten miles of the coordinates of the proposed transmitting antenna.

* * * * *

13. Section 73.877 is revised to read as follows:

§ 73.877 Station logs for LPFM stations.

The licensee of each LPFM station must maintain a station log. Each log entry must include the time and date of observation and the name of the person making the entry. The following information must be entered in the station log:

(a) Any extinguishment or malfunction of the antenna structure obstruction lighting, adjustments, repairs, or replacement to the lighting system, or related notification to the FAA. See §§ 17.48 and 73.49 of this chapter.

(b) Brief explanation of station outages due to equipment malfunction, servicing, or replacement;

(c) Operations not in accordance with the station license; and

(d) EAS weekly log requirements set forth in § 11.61(a)(1)(v) of this chapter.

14. In § 73.1660, paragraph (a) is revised to read as follows:

§ 73.1660 Acceptability of broadcast transmitters.

(a)(1) An AM, FM, or TV transmitter shall be verified for compliance with the requirements of this part following the procedures described in part 2 of this chapter.

(a)(2) An LPFM transmitter shall be certified for compliance with the requirements of this part following the procedures described in part 2 of the this chapter.

* * * * *

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

1. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

2. In § 74.1204, paragraphs (a) introductory text and (a)(4) are revised to read as follows:

§ 74.1204 Protection of FM broadcast, FM Translator and LP100 stations.

(a) An application for an FM translator station will not be accepted for filing if the proposed operation would involve overlap of predicted field contours with any other authorized commercial or noncommercial educational FM broadcast stations, FM translators, and Class D (secondary) noncommercial educational FM stations; or if it would result in new or increased overlap with an LP100 station, as set forth:

* * * * *

(4) LP100 stations (Protected Contour: 1 mV/m)

Frequency separation	Interference contour of proposed translator station	Protected contour of LP100 LPFM station
Cochannel	0.1 mV/m (40 dBu).	1 mV/m (60 dBu)
200 kHz	0.5 mV/m (54 dBu).	1 mV/m (60 dBu)

Note to paragraph (a)(4): LP100 stations, to the purposes of determining overlap pursuant to this paragraph, LPFM applications and permits that have not yet been licensed must be considered as operating with the maximum permitted facilities. All LPFM TIS stations must be protected on the basis of a nondirectional antenna.

* * * * *

[FR Doc. 00–28613 Filed 11–8–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

RIN 1018–AF54

Marine Mammals; Incidental Take During Specified Activities; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; correction.

SUMMARY: U.S. Fish and Wildlife Service regulations to authorize the incidental, unintentional take of small numbers of polar bears and Pacific walrus during year-round oil and gas industry exploration, development, and production operations in the Beaufort Sea and adjacent coast of Alaska expired on December 15, 1998. Subsequent regulations that we issued should have been characterized as ''adding'' rather than ''revising'' these regulations. This correction makes clear that our intent was to add the regulations.

DATES: This correction is effective March 30, 2000, and remains effective through March 31, 2003.

ADDRESSES: Comments and materials received in response to our most recent final rule action, published in the **Federal Register** on March 30, 2000, are available for public inspection during normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, at the Office of Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Horwath, Division of Fish and

Wildlife Management Assistance and Habitat Restoration, U.S. Fish and Wildlife Service, Telephone 703–358–1718, or on the Internet at Jeffrey_Horwath@fws.gov.

SUPPLEMENTARY INFORMATION: On December 15, 1998, our regulations at 50 CFR Part 18, Subpart J expired. These regulations were effective beginning on December 16, 1993 (58 FR 60402, November 16, 1993), and authorized the incidental, unintentional take of small numbers of polar bears and Pacific walrus during year-round oil and gas industry exploration, development, and production operations in the Beaufort Sea and adjacent coast of Alaska. We subsequently issued final regulations on January 29, 1999 (64 FR 4328) ''revising'' these expired regulations. Later regulations appear on February 3, 2000 (65 FR 5275), and March 30, 2000 (65 FR 16828). Rather than ''revising'' our regulations, we should have stated that we were ''adding'' these regulations at 50 CFR Part 18. Therefore, this action corrects this technical error by changing the amendatory instructions in our March 30, 2000, final rule to state that we are ''adding'' those regulations to 50 CFR Part 18, Subpart J. Letters of Authorization issued under the regulations are not affected by this action.

Accordingly, make the following correction to FR Doc. 00–7912 published at 65 FR 16828 on March 30, 2000:

PART 18—[CORRECTED]

On page 16842, in column one, correct amendatory instruction 2. to read as follows:

2. Add Subpart J to Part 18 to read as follows:

Dated: November 6, 2000.

Cathleen Short,

Assistant Director, Fisheries and Habitat Conservation, Fish and Wildlife Service.

[FR Doc. 00–28778 Filed 11–8–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300 and 679

[Docket No. 000616184-0290-02; I.D. 050500A]

RIN 0648-AK74

Fisheries of the Exclusive Economic Zone Off Alaska; Sitka Pinnacles Marine Reserve

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement Amendment 59 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) and to make changes to the regulations governing the Individual Fishing Quota (IFQ) commercial fishery and halibut sport fishery. This action designates an unusually productive and fragile 2.5 square nautical mile (nm) area of habitat as the Sitka Pinnacles Marine Reserve (Reserve) and closes this area to groundfish fishing and anchoring by commercial groundfish vessels, to halibut fishing and anchoring by IFQ halibut fishing vessels, to sport fishing for halibut, and to anchoring by any vessel if halibut is on board. The intent of this action is to protect an area containing important fish habitat from the effects of fishing and anchoring and to create a groundfish reserve.

DATES: Effective December 11, 2000.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Impact Review (EA/RIR/IRFA) and the Final Regulatory Flexibility Analysis (FRFA) prepared for this action may be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel, or by calling the Alaska Region, NMFS, at 907-586-7228. Send comments on any ambiguity or unnecessary complexity arising from the language used in this final rule to the Regional Administrator, Alaska Region, NMFS, 709 West Ninth Street, Federal Office Building, Suite 453, Juneau, AK 99801.

FOR FURTHER INFORMATION CONTACT: Nina Mollett, 907-586-7228; fax 907-586-7465.

SUPPLEMENTARY INFORMATION: The domestic groundfish fisheries of the Gulf of Alaska (GOA) are managed by NMFS under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing the domestic groundfish fisheries in the exclusive economic zone of the GOA appear at 50 CFR parts 600 and 679. Regulations governing the IFQ halibut fisheries in the exclusive economic zone of the GOA appear at 50 CFR part 679. Regulations governing the domestic halibut fisheries appear at 50 CFR 300.60 to 300.65, which supplements the annual fishery management measures adopted by the International Pacific Halibut Commission (IPHC) under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea.

Amendment 59 was submitted to NMFS for review and a notice of availability of the FMP amendment was published on May 12, 2000 (65 FR 30559), with comments on the FMP amendment invited through July 11, 2000. Amendment 59 was approved by NMFS on August 9, 2000. The proposed rule to implement Amendment 59 was published on June 26, 2000 (64 FR 39342). The public comment period ended on August 10, 2000. One letter of comments was received on Amendment 59 and its implementing regulations. A summary of this letter and NMFS' response is provided in the ''Response to Comments'' section.

Background

The Sitka Pinnacles area, in the Southeast Outside District of the GOA near Cape Edgecumbe, provides highly productive habitat for many species at different stages of their life cycles. Information collected during manned submersible surveys of groundfish habitat by the Alaska Department of Fish & Game (ADF&G) indicates that the diversity and density of fish around the Sitka Pinnacles are much greater than the typical eastern continental shelf of the GOA. The pinnacles habitat is fragile, and the concentration of fishes in a relatively small, compact space can lend itself to overfishing of certain species, particularly lingcod, at sensitive life stages.

The Sitka Pinnacles (also called the Cape Edgecumbe Pinnacles) consist of two large volcanic cones that rise abruptly off the seafloor. The top of one is within 70 meters (229.6 feet) of the sea surface, and the other within 40 meters (131.2 feet). The area from sea surface to seafloor provides a variety of rich habitat suitable for different species. The field of boulders on the bottom provides a spawning bed for

lingcod and refuge for large numbers of such commercially valuable species as yelloweye and tiger rockfish, and of such non-commercial species as prowfish. The flat, irregular tops of the pinnacles are used as a feeding platform by juvenile and adult rockfish and by huge concentrations of lingcod. The walls of the pinnacles, covered with algae, anemones, and other organisms, provide shelter to large numbers of juvenile and adult bottom-dwelling rockfish. Finally, schooling species, such as yellowtail and widow rockfish, feed along the pinnacle walls and in the water column between the top of the pinnacles and the surface.

Since 1997, when the State of Alaska (State) initially proposed this action to the Council, NMFS, ADF&G, and the IPHC have cooperated on creating the Reserve, as different species are managed under different jurisdictions (see Table 1).

THE SITKA PINNACLES TABLE 1—AGENCY ACTIONS TO CLOSE FISHERIES OFF CAPE EDGECUMBE

Species	Agency	Law
Commercial and recreational fishing for lingcod and black rockfish	ADF&G	These fisheries are closed under 5 AAC 28.150.
Groundfish	NMFS	Closed by Amd. 59 and regulatory amendments at 50 CFR 679.2 and § 679.22.
Halibut	NMFS and IPHC	Closed by regulatory amendments at 50 CFR 300.63 and § 679.22.
Scallops	ADF&G	Under Amd. 3 to the Fishery Management Plan for Scallop Fisheries off Alaska, NMFS delegates responsibility to the State for managing the scallop fishery. Scallop dredging has been closed under 5 AAC 38.120 in the ''Central Southeast Outside'' area, including the Sitka Pinnacles, since July, 1994.
Commercial and Recreational Salmon	NMFS and ADF&G	The Alaska State Board of Fish considered closure to salmon fishing at its February 2000 meeting and rejected the proposal.

The area has been used for fishing, especially with hook-and-line gear, for decades. In the late 1980s, a directed fishery for lingcod developed on the pinnacles. The high density and aggressive feeding behavior of lingcod made them extremely susceptible to capture; hourly catch rates of lingcod at the site exceeded catch rates in the surrounding area by threefold. In 1991, the State of Alaska (State) began attempting to preserve lingcod populations in nearby State waters (the Sitka Pinnacles are in Federal waters) through closures during winter when male lingcod are nest guarding and, in 1994, through spring/summer in-season closures of State-regulated fishing in areas that included the pinnacles. In 1995, the pinnacles area was included in the winter closure as well. In 1997, ADF&G issued an emergency order closing the area to all State-regulated groundfish fishing for the entire season. However, the sport fishery was not affected by any of the State's management actions and continued to take lingcod and Pacific halibut. In May 1998, the commercial and sportfish divisions of ADF&G submitted joint proposals to the State's Board of Fish and the Council to close the Sitka Pinnacles area. The Board of Fish closed the area to fishing for lingcod and black rockfish, which are species under its jurisdiction. It took up the question of closing the area to commercial and recreational salmon fishing in February 2000 but rejected the proposal.

This action has two parts:

1. Implementation of Amendment 59; Designation of Sitka Pinnacles Marine Reserve and Closure to Groundfish Fishing and Anchoring

This action complements State regulations by designating a 2.5 square nm area of the GOA as the Sitka Pinnacles Marine Reserve and closing this area to groundfish fishing or anchoring by vessels required to have a Federal fisheries permit under § 679.4(b).

2. Regulatory amendment for halibut

The Pacific halibut fishery is managed by the IPHC, under the Northern Pacific Halibut Act. The Act states that the Regional Fishery Management Council with authority for a geographic area may develop regulations governing U.S. waters ''which are in addition to, and not in conflict with, regulations adopted by the Commission'' (16 U.S.C. 773c(c)). Pursuant to this authority, this action closes the Reserve to fishing for halibut or anchoring by vessels required to have on board an Individual Fishing Quota (IFQ) halibut permit under § 679.4(d). Also pursuant to this authority, this action closes the area to sport fishing for halibut as defined at § 300.61, or anchoring by any vessel having halibut on board.

The combined effect of State and Federal regulations will allow the Sitka Pinnacles ecosystem to maintain its natural level of production by eliminating the harvest or bycatch of fish during critical portions of their life history. The prohibition on anchoring will prevent degradation of the area's fragile habitat.

Response to Comments

One letter was received during the public comment period. It was from the Center for Marine Conservation (CMC). CMC's comments are summarized and responded to as follows:

Comment: CMC supported the closure generally with certain reservations: (1) It would have preferred an ''ecosystem-based management strategy'' including designation of the reserve as a Habitat Area of Particular Concern (HAPC) to the ''species-specific strategy'' adopted by NMFS; (2) it supports a ban on all anchoring in the pinnacles area; (3) it supports closing a larger area to fishing that would include a buffer zone around

the pinnacles, noting that initial State-regulated closures designated a 3.1 square nm area.

Response: (1) The Reserve is being considered by the Council for HAPC designation as part of a broader HAPC amendment, which is undergoing a public planning process. (2) NMFS agrees that the anchoring prohibition is selective, not comprehensive. However, NMFS' authority under the Magnuson-Stevens Act is limited to the regulation of fishing vessels. Thus, NMFS does not have authority to prohibit anchoring by non fishing vessels. NMFS has delegated the management of commercial and sport salmon fishing to the State. NMFS has corresponded with the State over the possibility of prohibiting anchoring by salmon fishing vessels. (3) Initial state-regulated closures designated a 3.1 square nm area around the pinnacles. The discrepancy is due to an initial miscalculation of the area, which has been corrected. The area is actually 2.5 square nm. The area delineated has remained the same dimension and includes the entire area around the pinnacles recommended by the State in its initial presentation to the Council, as described in the final rule. A larger closed area would lead to greater impacts on fishermen and would have less community support. The 2.5 square nm closure adequately protects the discrete habitat area surrounding the Sitka Pinnacles.

Classification

This action has been determined to be not significant under Executive Order12866. No new reporting, recordkeeping, or compliance requirements are imposed by this final rule.

NMFS has prepared an FRFA that describes the impact this final rule is expected to have on small entities. A copy of this analysis is available from NMFS (see **ADDRESSES**). At the upper limit, the total number of entities that could be affected by this action is estimated at 2,618, which includes 1,048 fixed gear groundfish vessels and 1,570 halibut vessels, based on 1998 data for vessels that fished in the GOA. This figure does not include trawl vessels, which are already prohibited from fishing in this area under Amendment 41 (63 FR 8356, February 19, 1998). Of the non-trawl vessels, the great majority (90 percent) are catcher vessels under 60 feet in length overall (as opposed to larger catcher vessels and catcher-processors). The necessary data on ownership, affiliation, contractual relationships, and the rest from which to conclusively determine which of these operations are ''small entities'' for Regulatory Flexibility Act purposes are not available, and some of these 2,618 vessels might not qualify under Small Business Administration criteria. However, for the purposes of the FRFA analysis, all of these groundfish and commercial halibut vessels are assumed to be small entities, given the nature of the fisheries they participate in and the unlikelihood that many of them have annual gross revenues in excess of $3 million. This simplifying assumption avoids the risk of understating the potential impact on small entities.

Realistically, the assumption that all vessels fishing in the GOA could be affected greatly inflates the estimate of vessels whose opportunity to fish could potentially be affected by this final rule. The closure is in Statistical Area (S.A.) 355631. Information from the State's Commercial Fisheries Entry Commission fish ticket data shows that, in 1998, 97 vessels fished for groundfish in S. A. 355631. The NMFS IFQ landings database shows that 67 vessels caught IFQ halibut in 1998 in S. A. 355631 (4.2 percent of halibut vessels). Therefore, 157 is a more realistic estimate of the universe of commercial groundfish and halibut vessels that fish in the vicinity and whose opportunity to fish could potentially be affected by the final rule.

The total landings of State and federally managed species in 1998 in S. A. 355631, based on fish ticket data, were 748,378 lb (or about 0.14 percent of the total landings in the GOA that year). The total amount of halibut landed in S. A. 355631 was 409,000 lb, or 0.9 percent of the total landed in the GOA, a percentage which remained consistent from 1995 to 1998. The closure area itself is less than 1 percent of S. A. 355631 (2.5 sq nm out of a total of 466 sq nm). The historical poundage of groundfish and halibut taken in the closure area cannot be ascertained with any further accuracy, however, because the data built from fish tickets give only statistical areas and not exact catch locations.

In addition to the commercial fishing vessels, 588 charter vessels, owned by 397 unique businesses, fished for halibut in 1988 in IPHC Area 2C, in which the Sitka Pinnacles are located. Of the charter vessels, 364 were homeported in Sitka, and 191 of the Sitka vessels targeted bottomfish, including Pacific halibut. Opportunities of charter boat operators, as well as individual anglers, to fish for Pacific halibut could be affected by this action. But few, if any, of these charter boats have been fishing on the pinnacles since the State closed the area to fishing for lingcod and State-managed rockfish species in the summer of 1998. The aggregations of lingcod present on the pinnacles were an incentive to travel to this site. Although halibut may be found near the Sitka Pinnacles, they do not aggregate there in any greater numbers than elsewhere in S. A. 355631.

The actual number of vessels affected by the rule will be even smaller than the number outlined. Few fishing vessels currently use the area. Most, if not all, groundfish and halibut fishermen have voluntarily avoided the pinnacles area for the past 2 years, since ADF&G regulations prohibiting the take of groundfish species under its jurisdiction took effect. Local fishermen have been supportive of protecting the Sitka Pinnacles.

If any vessels continue to fish in the reserve, they are not likely to be adversely affected by the closure to any significant extent, as the area constitutes less than 1 percent of the grounds in S. A. 355631 and less than .001 percent of the total available fishing grounds in the GOA (about 340,000 sq nm). Some long-term advantage may accrue to fishermen in terms of fishing opportunity in nearby areas because leaving an area of notably high biological importance and productivity (e.g., unique breeding, spawning, rearing habitat) undisturbed has the potential of increasing production through a spillover effect in adjacent areas that remain open to fishing. Any such benefits from increased production, however, could be offset in an open-access situation because increased catch per unit effort in adjacent areas could lead to crowding externalities. The preferred alternative selected, under which salmon fishing would continue to be allowed, was chosen in order to reduce the potential impact on small entities. The State Board of Fish considered and rejected closing the area to salmon fishing at its February 2000 meeting in order to minimize unwarranted adverse impacts on numerous salmon vessels that fish in the GOA.

In summary, the cost to small entities of implementing the final rule is expected to be quite low, as the area being proposed for closure constitutes an extremely small percentage of available fishing grounds, and few, if any, vessels have been fishing in the area since ADF&G promulgated regulations prohibiting fishing for groundfish species under its jurisdiction in 1998. No total allowable catch quotas will be changed by the rule, and NMFS does not anticipate a reduction in catch for any species as a result of this rulemaking.

The Environmental Assessment concluded that implementing the

amendment is not likely to affect the quality of the human environment.

The President has directed Federal agencies to use plain language in their communication with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this final rule. Such comments should be sent to the Alaska Regional Administrator (see **ADDRESSES**).

List of Subjects

50 CFR Part 300

Administrative practice and procedure, Exports, Fish, Fisheries, Marine resources.

50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: November 1, 2000.

William T. Hogarth,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons discussed in the preamble, 50 CFR parts 300 and 679 are amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for 50 CFR part 300, subpart E, continues to read as follows:

Authority: 16 U.S.C. 773 - 773k.

2. In subpart E, Pacific Halibut Fisheries, § 300.63, paragraph (e) is added to read as follows:

§ 300.63 Catch sharing plans, local area management plans, and domestic management measures.

* * * * *

(e) *Prohibition on halibut fishing and anchoring in the Sitka Pinnacles Marine Reserve.* (1) For purposes of this paragraph (e), the Sitka Pinnacles Marine Reserve means an area totaling 2.5 square nm off Cape Edgecumbe, defined by straight lines connecting the following points in a counterclockwise manner:

56°55.0'N lat., 135°54.0'W long;
56°57.0'N lat., 135°54.0'W long;
56°57.0'N lat., 135°57.0'W long;
56°55.5'N lat., 135°57.0'W long.

(2) No person shall engage in sport fishing, as defined in § 300.61, for halibut within the Sitka Pinnacles Marine Reserve.

(3) No person shall anchor a vessel within the Sitka Pinnacles Marine Reserve if halibut is on board.

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

3. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

4. In § 679.2, a new definition for the ''Sitka Pinnacles Marine Reserve'' is added in alphabetical order, to read as follows:

§ 679.2 Definitions.

* * * * *

Sitka Pinnacles Marine Reserve means an area totaling 2.5 square nm in the GOA, off Cape Edgecumbe, in Statistical Area 650. See Figure 18 to this part.

* * * * *

5. In § 679.22, paragraph (b)(5) is added to read as follows:

§ 679.22 Closures.

* * * * *

(b)* * *

(5) *Sitka Pinnacles Marine Reserve.* (i) No vessel required to have a Federal fisheries permit under § 679.4(b) may fish for groundfish or anchor in the Sitka Pinnacles Marine Reserve, as described in Figure 18 to this part.

(ii) No vessel required to have on board an IFQ halibut permit under § 679.4(d) may fish for halibut or anchor in the Sitka Pinnacles Marine Reserve, as described in Figure 18 to this part.

* * * * *

6. In part 679, Figure 18 is added to read as follows:

Figure 18 to Part 679–Sitka Pinnacles Marine Reserve

BILLING CODE 3510–22–S

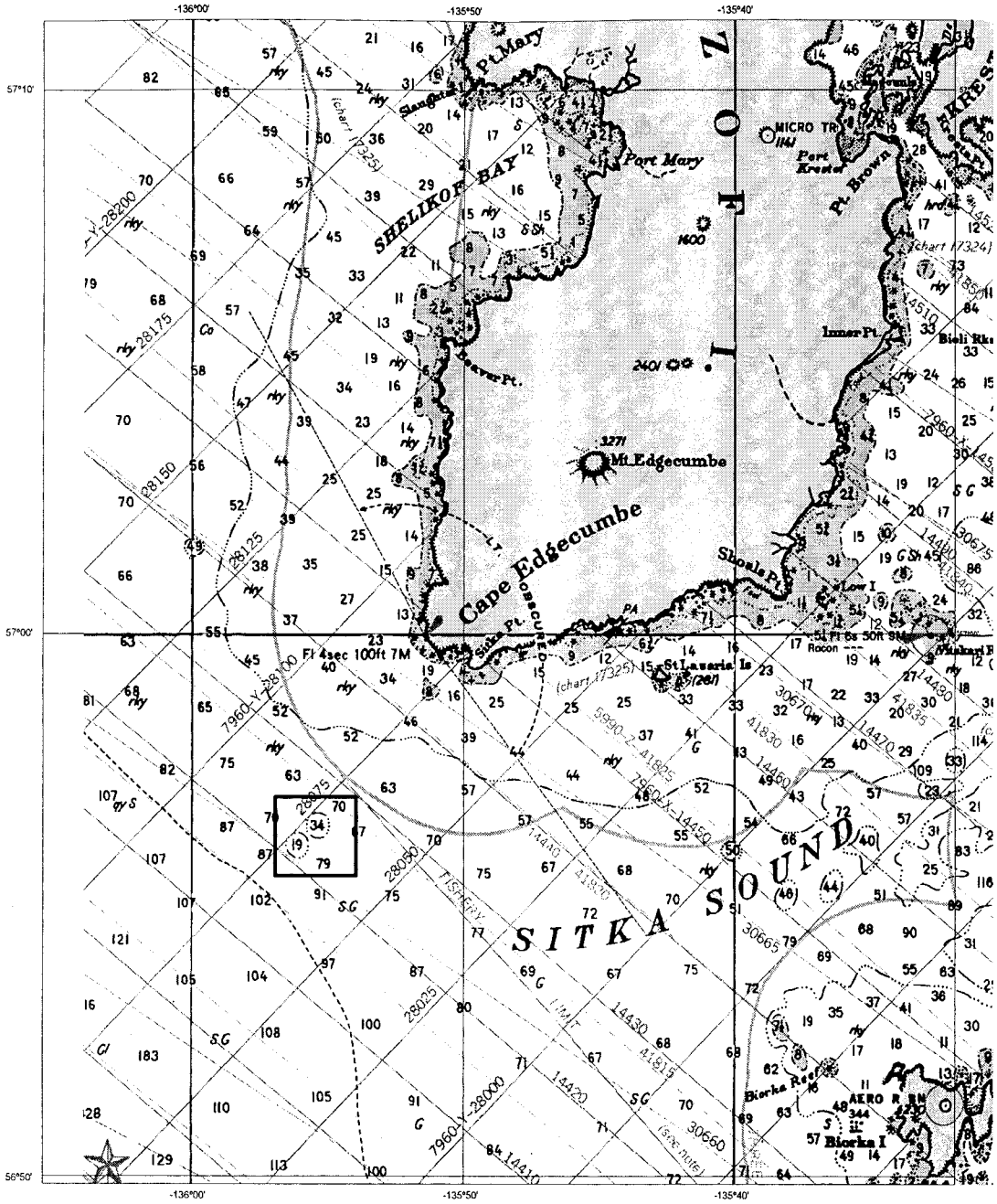

Figure 18 to Part 679. Sitka Pinnacles Marine Reserve (area enclosed within rectangle).

a. Map

b. Coordinates

An area totaling 2.5 square nm off Cape Edgecumbe, defined by straight lines connecting the following points in a counterclockwise manner:

56°55.5'N lat., 135°54.0'W long;
56°57.0'N lat., 135°54.0'W long;
56°57.0'N lat., 135°57.0'W long;
56°55.5'N lat., 135°57.0'W long.

[FR Doc. 00–28676 Filed 11–09–00; 8:45 am]
BILLING CODE 3510–22–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 99122347-9347-01; I.D. 071900A]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Whiting Closure for the Catcher/Processor Sector

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

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces closure of the 2000 catcher/processor fishery for Pacific whiting (whiting) at 6 p.m. local time (l.t.) November 6, 2000, because the allocation for the catcher/processor sector will be reached by that time. This action is intended to keep the harvest of whiting within the 2000 allocation levels.

DATES: Effective from 6 p.m. l.t. November 6, 2000, until the start of the 2001 primary season for the catcher/processor sector, unless modified, superseded or rescinded. Comments will be accepted through November 24, 2000.

ADDRESSES: Submit comments to Donna Darm,, Acting Regional Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070; or Rebecca Lent, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

FOR FURTHER INFORMATION CONTACT: Becky Renko at 206-526-6110.

SUPPLEMENTARY INFORMATION: This action is authorized by regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California. On January 4, 2000 (65 FR 221), the levels of allowable biological catch (ABC), the optimum yield (OY) and the commercial OY (the OY minus the tribal allocation) for U.S. harvests of whiting were announced in the **Federal Register**. For 2000, the whiting ABC and OY are 232,000 mt (mt), the tribal whiting allocation is 32,500 mt, and the commercial OY is 199,500 mt.

Regulations at 50 CFR 660.323(a)(4) divide the commercial OY into separate allocations for the catcher/processor (34 percent), mothership (24 percent), and shore-based (42 percent) sectors of the whiting fishery. The 2000 commercial whiting allocations are 67,830 mt for the catcher/processor sector, 47,880 mt for the mothership sector, and 83,790 mt for the shoreside sector. The catcher/processor sector is composed of vessels that harvest and process whiting. The mothership sector is composed of motherships, and catcher vessels that harvest whiting for delivery to motherships. Motherships are vessels that process, but do not harvest, whiting. The shoreside sector is composed of vessels that harvest whiting for delivery to shoreside processors.

Regulations at 50 CFR 660.323(a)(3)(i) describe the primary season for catcher/processors as the period(s) when at-sea processing is allowed and the fishery is open for the catcher/processor sector. When each sector's allocation is reached, the primary season for that sector is ended.

NMFS Action

This action announces achievement of the allocation for the catcher/processor sector only. The best available information on November 1, 2000, indicated that the 67,830 mt catcher/processor allocation would be reached by 6 p.m. l.t. on November 6, 2000, at which time the primary season the catcher/processor sector ends.

For the reasons stated here and in accordance with the regulations at 50 CFR 660.323(a)(4)(iii)(A), NMFS herein announces:

Effective 6 p.m. l.t. on November 6, 2000, further taking and retaining, receiving or at-sea processing of whiting by a catcher/processor is prohibited. No additional unprocessed whiting may be brought on board after at-sea processing is prohibited, but a catcher/processor may continue to process whiting that was on board before at-sea processing was prohibited.

Classification

This action is authorized by the regulations implementing the FMP. The determination to take this action is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Regional Administrator (see **ADDRESSES**) during business hours. This action is taken under the authority of 50 CFR 660.323(a)(4)(iii)(A) and is exempt from review under Executive Order 12866.

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

Dated: November 3, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–28812 Filed 11–6–00; 4:01 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211040-0040-01; I.D. 102400C]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Bering Sea and Aleutian Islands Management Area; Correction

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

ACTION: Reallocation; correction.

SUMMARY: This document corrects the reallocation of Bering Sea and Aleutian Islands management area (BSAI) Pacific cod from trawl catcher/processors and vessels using jig gear to vessels using hook-and-line or pot gear.

DATES: Effective November 1, 2000.

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

SUPPLEMENTARY INFORMATION: This document corrects the reallocation of Pacific cod in the Bering Sea and Aleutian Islands from trawl catcher/processors and vessels using jig gear to vessels using hook-and-line or pot gear.

Correction

In the final rule Pacific Cod in the Bering Sea and Aleutian Islands Management Area; published on November 1, 2000 (65 FR 65272), FR Doc. 00-28023, an error was made in **SUPPLEMENTARY INFORMATION**.

On page 65273, in the third column, the tenth line is corrected to read as follows: ''processors, 81,958 mt to catcher/processor vessels using''.

Dated: November 3, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–28842 Filed 11–08–00; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 65, No. 218
Thursday, November 9, 2000

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–283–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 747–100 series airplanes, that currently requires repetitive inspections to detect cracking of the outer chord of the body station (BS) 1480 upper and lower bulkhead and longeron splice fitting; repair, if necessary; and modification of the skin splice plate, the outer chord splice fitting, and the stringer interface of the lower bulkhead, if necessary. This action would revise the applicability of the existing AD to add additional airplanes, require accomplishment of previously optional inspections and clarify those inspections, extend certain compliance times, and require additional work in certain areas. This proposal is prompted by reports that fatigue cracking has been found in the outer chord of the BS 1480 bulkhead at the overwing longeron splice on airplanes not subject to the existing AD. The actions specified in this proposed AD are intended to detect and correct fatigue cracking of the outer chord of the BS 1480 upper and lower bulkhead and longeron splice fitting, which could result in reduced structural integrity of the fuselage and the inability to carry limit load.

DATES: Comments must be received by December 26, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–283–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. 98–NM–283–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: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; 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.

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 98–NM–283–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. 98–NM–283–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On September 15, 1998, the FAA issued AD 98–20–25, amendment 39–10791 (63 FR 50508, September 22, 1998), applicable to certain Boeing Model 747–100 series airplanes, to require repetitive inspections to detect cracking of the outer chord of the body station (BS) 1480 upper and lower bulkhead and longeron splice fitting, and repair, if necessary. Alternatively, that action requires other repetitive inspections to detect cracking of the BS 1480 upper and lower bulkhead, bulkhead outer chord, web, skin, splice components, and lower bulkhead/stringer interface; and modification of the skin splice plate, the outer chord splice fitting, and the stringer interface of the lower bulkhead, if necessary. That action was prompted by a report indicating that fatigue cracking was found in the outer chord of the BS 1480 bulkhead at the overwing longeron splice, and that the longeron splice fitting was completely severed. The requirements of that AD are intended to detect and correct such fatigue cracking, which could result in reduced structural integrity of the fuselage and the inability to carry limit load.

Actions Since Issuance of Previous Rule

Since the issuance of AD 98–20–25, the FAA has determined that the detailed visual inspections described in paragraph (a)(1) of that AD as one alternative for compliance with that AD may not be adequate to ensure that any fatigue cracking will be detected in a timely manner. Therefore, this action proposes to require detailed visual, ultrasonic, and open-hole high

frequency eddy current (HFEC) inspections which were referenced in paragraph (a)(2) of AD 98–20–25 as another alternative for compliance with that AD.

Paragraph (a)(2) of AD 98–20–25 specifies repetitive inspections of both the upper and lower bulkhead, bulkhead outer chord, web, skin, splice components, and lower bulkhead/stringer interface. The initial inspection is required prior to the accumulation of 10,000 total flight cycles, or within 45 days after October 7, 1998 (the effective date of AD 98–20–25), whichever occurs later. Since the issuance of AD 98–20–25, the FAA has determined that it is appropriate to extend the inspection threshold for the inspection of the bulkhead outer chord, skin, and lower bulkhead/stringer interface. The FAA finds that a repetitive inspection threshold of 20,000 total flight cycles for inspection of the lower bulkhead/stringer interface is adequate to ensure the continued safety of the affected airplanes.

Explanation of New Relevant Service Information

Since the issuance of AD 98–20–25, the FAA has reviewed and approved Boeing Alert Service Bulletin 747–53A2390, Revision 1; including Appendices A, B, C, and D; dated July 6, 2000. (AD 98–20–25 references the original issue of that service bulletin, dated July 31, 1997, as an appropriate source of service information.) Like the original issue of the service bulletin, Revision 1 describes procedures for repetitive inspections to detect cracking of the BS 1480 upper and lower bulkhead, bulkhead outer chord, web, skin, splice components, and lower bulkhead/stringer interface; repair, if necessary; and, as part of a certain inspection plan, procedures for modification of the skin splice plate, outer chord splice fitting, and the stringer interface of the lower bulkhead. Revision 1 of the service bulletin expands the effectivity listing specified in the original issue of the service bulletin to include Model 747–400 series airplanes up to line number 1254, includes new instructions for inspection and modification at stringer S–34 in the lower bulkhead/stringer interface area, revises inspection procedures for airplanes with a reinforcement strap installed on the bulkhead outer chord, and references new repair instructions.

Explanation of Applicability

In the preamble to AD 98–20–25, the FAA specified that the actions required by that AD were considered ''interim action'' and that the FAA was considering further rulemaking action to supersede that AD to require inspections and modification of the upper and lower bulkhead and overwing longeron at BS 1480 for all Boeing Model 747–100, –200, and –300 series airplanes. The FAA has determined that further rulemaking is indeed necessary; this proposed AD follows from that determination.

In addition, as specified previously, Revision 1 of the service bulletin adds Boeing Model 747–400 series airplanes up to line number 1254 to the effectivity listing. The area of the outer chord of the BS 1480 upper bulkhead on Model 747–400 series airplanes up to and including line number 1096 is essentially the same as that on other Boeing Model 747 series airplanes. Therefore, this proposed AD would require the same inspections of the upper bulkhead for Boeing Model 747–400 series airplanes up to and including line number 1096 as it would require for other Boeing Model 747 series airplanes. Improvements were made during production on the upper bulkhead area on Model 747–400 series airplanes having line numbers 1097 through 1254 inclusive; however, the lower bulkhead area on those airplanes is also essentially the same as on other Model 747 series airplanes. Therefore, this proposed AD also would require the same inspections of the lower bulkhead for Boeing Model 747–400 series airplanes up to and including line number 1254 as it would require for other Boeing Model 747 series airplanes. Improvements were made during production on the lower bulkhead area on Model 747–400 series airplanes having line number 1255 and above, so those airplanes are not subject to this proposed AD.

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 supersede AD 98–20–25 to continue to require repetitive inspections to detect cracking of the outer chord of the BS 1480 upper and lower bulkhead and longeron splice fitting; repair, if necessary; and modification of the skin splice plate, the outer chord splice fitting, and the stringer interface of the lower bulkhead, if necessary. This proposed AD would require accomplishment of the actions specified in Revision 1 of the service bulletin described previously, except as discussed below.

Differences Between Service Bulletin and Proposed AD

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposed AD would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Explanation of Changes Made to AD 98–20–25

Paragraph (a)(2) of this AD is essentially a restatement of paragraph (a)(2) of AD 98–20–25; however, the FAA has revised paragraph (a)(2) of this proposed AD to more accurately state the inspections included in that paragraph. The inspections specified in paragraph (a)(2) of this proposed AD are the same as those specified in paragraph (d) of this proposed AD. Thus, an operator who has inspected an airplane in accordance with paragraph (a)(2) of this AD is not required to inspect in accordance with paragraphs (c) and (d) of this AD.

In addition, the FAA has added a note to the proposed rule to clarify the definition of a detailed visual inspection.

Cost Impact

There are approximately 1,128 airplanes of the affected design in the worldwide fleet. The FAA estimates that 259 airplanes of U.S. registry would be affected by this proposed AD.

AD 98–20–25 applies to airplanes listed in Groups 1 through 3 of the service bulletin. The detailed visual inspection that is currently offered as one alternative for compliance with AD 98–20–25 takes approximately 16 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $960 per airplane, per inspection cycle.

For airplanes listed in Groups 1 through 3 in the service bulletin (34 U.S.-registered airplanes), the proposed detailed visual, ultrasonic, and open hole HFEC inspections of the upper bulkhead area (which AD 98–20–25 references as an alternative inspection program) would take approximately 32 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost

impact of these proposed inspections on U.S. operators is estimated to be $65,280, or $1,920 per airplane, per inspection cycle.

For airplanes listed in Groups 4 through 22 in the service bulletin (191 U.S.-registered airplanes), the proposed detailed visual, ultrasonic, and open hole HFEC inspections of the upper bulkhead area would take approximately 22 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these inspections on U.S. operators is estimated to be $252,120, or $1,320 per airplane, per inspection cycle.

For all airplanes listed in the applicability of this proposed AD (259 U.S.-registered airplanes), the proposed detailed visual, ultrasonic, and open hole HFEC inspections of the lower bulkhead/stringer interface area would take approximately 30 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these proposed inspections on U.S. operators is estimated to be $466,200, or $1,800 per airplane, per inspection cycle.

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

Regulatory Impact

The regulations 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 removing amendment 39–10791 (63 FR 50508, September 22, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 98–NM–283–AD. Supersedes AD 98–20–25, Amendment 39–10791.

Applicability: Model 747 series airplanes, line numbers (L/N) 1 through 1254 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 (j)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking in the outer chord of the body station (BS) 1480 bulkhead at the overwing longeron splice, which could result in reduced structural integrity of the fuselage and the inability to carry limit load, accomplish the following:

Restatement of Requirements of AD 98–20–25:

Repetitive Inspections and Repair

(a) For Model 747–100 series airplanes, L/N 1 through 87 inclusive: Prior to the accumulation of 10,000 total flight cycles, or within 45 days after October 7, 1998 (the effective date of AD 98–20–25, amendment 39–10791), whichever occurs later, accomplish either paragraph (a)(1) or (a)(2) of this AD.

(1) Perform a detailed visual inspection to detect cracking of the longeron splice fitting at BS 1480, the forward side of the outer chord of the BS 1480 bulkhead at the longeron splice fitting attachment bolts, and the aft side of the outer chord of the BS 1480 bulkhead within two inches above the outer chord splice fitting, on both the left and right sides of the airplane.

Note 2: Figure 5 of Boeing Alert Service Bulletin 747–53A2390, dated July 31, 1997, provides an exploded view of the structural components of the splice area for the purpose of parts identification. (However, paragraph (a)(1) of this AD does not require the inspection described in Figure 5.)

Note 3: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(i) If any cracking is detected, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

(ii) Repeat the detailed visual inspection thereafter at intervals not to exceed 250 flight cycles, until the initial inspection required by paragraph (a)(2) or (d) of this AD is accomplished.

(2) Perform detailed visual, ultrasonic, and open hole high frequency eddy current (HFEC) inspections to detect cracking of the upper and lower bulkhead, bulkhead outer chord, web, skin, splice components, and lower bulkhead/stringer interface, in accordance with Figures 5 and 8 of Boeing Alert Service Bulletin 747–53A2390, dated July 31, 1997. Additionally, for airplanes on which the inspection in ''Plan B'' of the service bulletin is accomplished, modify the skin splice plate, the outer chord splice fitting, and the stringer interface of the lower bulkhead, in accordance with the Accomplishment Instructions of the service bulletin. Accomplishment of these actions constitutes terminating action for the repetitive inspection requirements of paragraph (a)(1) of this AD.

(i) If any cracking is detected, prior to further flight, repair in accordance with the service bulletin, except as provided by paragraph (b) of this AD.

(ii) Repeat the inspections thereafter in accordance with the flight safety inspection

program specified in Figures 1 and 3 of the service bulletin.

(b) Where the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, repair in accordance with a method approved by the Manager, Seattle ACO; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

New Requirements of This AD

Groups 1 Through 3: Splice Area Work (Compliance Times)

Note 4: Airplanes inspected in accordance with paragraph (a)(2) of this AD are not required to be inspected in accordance with paragraphs (c) and (d) of this AD.

(c) For airplanes listed in Groups 1 through 3 in Boeing Alert Service Bulletin 747–53A2390, Revision 1; including Appendices A, B, C, and D; dated July 6, 2000; on which the requirements of paragraph (a)(2) of this AD have NOT been accomplished prior to the effective date of this AD: Accomplish paragraph (d) of this AD at the applicable time specified in paragraph (c)(1), (c)(2), or (c)(3) of this AD.

(1) For airplanes on which the inspection specified in Boeing Service Bulletin 747–53–2333 has not been accomplished: Inspect prior to the accumulation of 10,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later.

(2) For airplanes on which the inspection specified in Boeing Service Bulletin 747–53–2333 has been accomplished, but the full modification specified in that service bulletin has not been accomplished: Inspect at the later of the times specified in paragraphs (c)(2)(i) and (c)(2)(ii) of this AD.

(i) Prior to the accumulation of 10,000 total flight cycles, or within 2,000 flight cycles after accomplishment of the last inspection in accordance with Boeing Service Bulletin 747–53–2333, whichever occurs first.

(ii) Within 1,000 flight cycles after the effective date of this AD.

(3) For airplanes on which the full modification specified in Boeing Service Bulletin 747–53–2333 has been accomplished: Inspect at the later of the times specified in paragraphs (c)(3)(i) and (c)(3)(ii) of this AD.

(i) Prior to the accumulation of 16,000 total flight cycles, or within 6,000 flight cycles after accomplishment of the full modification in accordance with Boeing Service Bulletin 747–53–2333, whichever occurs first.

(ii) Within 1,000 flight cycles after the effective date of this AD.

Groups 1 Through 3: Splice Area Work (Inspections)

(d) For airplanes listed in Groups 1 through 3 in Boeing Alert Service Bulletin 747–53A2390, Revision 1; including Appendices A, B, C, and D; dated July 6, 2000; on which the requirements of paragraph (a)(2) of this AD have NOT been accomplished prior to the effective date of this AD: At the applicable time specified in paragraph (c) of this AD, accomplish paragraph (d)(1) or (d)(2) of this AD. Accomplishment of the requirements of this paragraph constitutes terminating action for the repetitive inspection requirements specified in paragraph (a)(1) of this AD, or, for the upper bulkhead splice area ONLY, for the inspection requirements specified in paragraph (a)(2) of this AD.

(1) Plan ''A'': Perform detailed visual, ultrasonic, and HFEC inspections to detect cracking of the splice area, in accordance with Plan ''A'' and Figure 5, as defined in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2390, Revision 1; including Appendices A, B, C, and D; dated July 6, 2000. Repeat the inspections thereafter in accordance with the flight safety inspection program as specified under Plan ''A'' and Figure 1 of the service bulletin.

(2) Plan ''B'': Modify the skin splice plate and outer chord splice fitting in accordance with Plan ''B,'' as defined in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2390, Revision 1; including Appendices A, B, C, and D; dated July 6, 2000. Perform HFEC inspections and modification, then accomplish repeat open hole HFEC inspections, in accordance with the flight safety inspection program, as specified under Plan ''B'' and Figure 1 of the service bulletin. Accomplishment of the modification and inspections in accordance with this paragraph terminates the repetitive inspection requirements in paragraph (d)(1) of this AD.

Groups 4 Through 22: Splice Area Work (Compliance Time and Inspections)

(e) For airplanes listed in Groups 4 though 22 in Boeing Alert Service Bulletin 747–53A2390, Revision 1; including Appendices A, B, C, and D; dated July 6, 2000: Prior to the accumulation of 16,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later, perform detailed visual and ultrasonic inspections to detect cracking of the bulkhead forward flange in accordance with Figure 7 of the service bulletin, and accomplish the requirements of either paragraph (e)(1) or (e)(2) of this AD.

(1) Plan ''A'': Perform open hole HFEC inspections to detect cracking of the splice area, in accordance with Plan ''A'' and Figures 6 and 7, as defined in the Accomplishment Instructions of the service bulletin. Repeat the inspections thereafter in accordance with the flight safety inspection program as specified under Plan ''A'' and in Figure 2 of the service bulletin.

(2) Plan ''B'': Perform open hole HFEC inspections and modification of the upper bulkhead, bulkhead outer chord, web, skin, and splice components; in accordance with Plan ''B,'' as defined in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2390, Revision 1; including Appendices A, B, C, and D; dated July 6, 2000. Thereafter, repeat the open hole HFEC inspections in accordance with the flight safety inspection program as specified under Plan ''B'' and Figure 2 of the service bulletin. Accomplishment of the modification and inspections in accordance with this paragraph terminates the repetitive inspection requirements specified in paragraph (e)(1) of this AD.

All Airplanes: Lower Bulkhead/Stringer Interface Work (Compliance Times)

(f) For all airplanes (L/N 1 through 1254 inclusive): At the applicable time specified in paragraph (f)(1) or (f)(2) of this AD, accomplish paragraph (g) of this AD.

(1) For airplanes on which an inspection of the lower bulkhead has NOT been accomplished prior to the effective date of this AD in accordance with paragraph (a)(2) of this AD: Inspect prior to the accumulation of 20,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later.

(2) For airplanes on which an inspection of the lower bulkhead HAS been accomplished prior to the effective date of this AD in accordance with paragraph (a)(2) of this AD: Inspect prior to the accumulation of 20,000 total flight cycles, or at the time of the next scheduled inspection of the lower bulkhead in accordance with paragraph (a)(2) of this AD, whichever occurs later.

All Airplanes: Lower Bulkhead/Stringer Interface Work (Inspections)

(g) For all airplanes (L/N 1 through 1254 inclusive): At the applicable time specified in paragraph (f) of this AD, accomplish paragraph (g)(1) or (g)(2) of this AD. For airplanes having L/N 1 through 87 inclusive, accomplishment of the requirements of this paragraph constitutes terminating action for the inspection requirements specified in paragraph (a)(2) of this AD for the lower bulkhead/stringer interface area ONLY.

(1) Plan ''A'': Perform detailed visual and either ultrasonic or open hole HFEC inspections, as applicable, to detect cracking of the lower bulkhead/stringer interface area, in accordance with Plan ''A'' and Figure 8, as defined in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2390, Revision 1; including Appendices A, B, C, and D; dated July 6, 2000. Repeat the inspections thereafter in accordance with the flight safety program as specified under Plan ''A'' and Figure 3 or Figure 8 of the service bulletin.

(2) Plan ''B'': Except as provided by paragraph (h) of this AD, perform open hole HFEC inspections and modification of the lower bulkhead/stringer interface area, in accordance with Plan ''B'' and Figure 19, as defined in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2390, Revision 1; including Appendices A, B, C, and D; dated July 6, 2000. Thereafter, repeat the detailed visual and either ultrasonic or open hole HFEC inspections, as applicable, in accordance with the flight safety inspection program as specified under Plan ''B'' and Figures 3 and 8 of the service bulletin. Accomplishment of the modification and inspections in accordance with this paragraph terminates the repetitive inspection requirements specified in paragraph (g)(1) of this AD.

Airplanes Modified With Original Service Bulletin: Post-Modification Work

(h) For any airplane (L/N 1 through 1254 inclusive) on which the modification specified in paragraph (g)(2) was accomplished prior to the effective date of this AD in accordance with the original issue of Boeing Alert Service Bulletin 747–53A2390, dated July 31, 1997: Prior to the accumulation of 20,000 total flight cycles, or within 2,000 flight cycles after the effective date of this AD, whichever occurs later, accomplish post-modification work in accordance with Figure 26 of Boeing Alert Service Bulletin 747–53A2390, Revision 1; including Appendices A, B, C, and D; dated July 6, 2000.

Repair

(i) Except as provided by paragraph (b) of this AD, if any cracking is detected during any inspection required by this AD, prior to further flight, repair in accordance with Boeing Alert Service Bulletin 747–53A2390, Revision 1; including Appendices A, B, C, and D; dated July 6, 2000.

Alternative Methods of Compliance

(j)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle 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.

(2) Alternative methods of compliance, approved previously in accordance with AD 98–20–25, amendment 39–10791, are approved as alternative methods of compliance with paragraph (a) of this AD.

Note 5: 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

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

Issued in Renton, Washington, on November 2, 2000,

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–28723 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–75–AD]

RIN 2120–AA64

Airworthiness Directives; Rolladen Schneider Flugzeugbau GmbH Models LS 4 and LS 4a Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Rolladen Schneider Flugzeugbau GmbH (Rolladen Schneider) Models LS 4 and LS 4a sailplanes. The proposed AD would require you to inspect the airbrake system for damage and proper rigging, with correction, repair, or replacement, as necessary. The proposed AD would also require you to report any damage found to the Federal Aviation Administration (FAA). The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to detect and correct damage to the airbrake locking bracket caused by asymmetric loads. This condition could result in the pilot's inability to operate the airbrake controls, with consequent loss of sailplane control.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before December 14, 2000.

ADDRESSES: Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–75–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Rolladen-Schneider Flugzeugbau GmbH, Muhlstrasse 10, D–63329 Egelsbach, Germany; phone: ++ 49 6103 204126; facsimile: ++ 49 6103 45526. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on the proposed AD? The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES.** The FAA will consider all comments received on or before the closing date. We may amend the proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the proposed AD action and determining whether we need to take additional rulemaking action.

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

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

How can I be sure FAA receives my comment? If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 99–CE–75–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD? The LBA, which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on certain Rolladen Schneider Models LS 4 and LS 4a sailplanes. The LBA reports two occurrences of damaged airbrake

locking brackets found on the above-referenced sailplanes. The damage was the result of improper rigging of the airbrake system. The asymmetric load that occurs over time with an improperly rigged airbrake system could result in cracks in the welding region of the airbrake tube and lateral deformation of the airbrake locking bracket.

What are the consequences if the condition is not corrected? Damage to the airbrake locking bracket, if not detected and corrected, could result in the pilot's inability to operate the airbrake controls with consequent loss of sailplane control.

Is there service information that applies to this subject? Rolladen Schneider has issued Technical Bulletin No. 4042, dated July 2, 1999.

What are the provisions of this service bulletin? The service bulletin specifies procedures for:

—Inspecting the airbrake locking bracket for deformation (indicated by cracks in paint, paint chipping off, and/or cracks in the welding region to the tube); and

—If any deformation exists, repairing or modifying the airbrake locking bracket by adding a brace that increases the structural strength of the bracket.

What action did the LBA take? The LBA classified this service bulletin as mandatory and issued German AD 1999–270, dated July 22, 1999, in order to assure the continued airworthiness of these sailplanes in Germany.

Was this in accordance with the bilateral airworthiness agreement? These sailplane models are manufactured in Germany and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the LBA has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of the Proposed AD

What has FAA decided? The FAA has examined the findings of the LBA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Rolladen Schneider Models LS 4 and LS 4a sailplanes of the same type design;

—The actions specified in the previously-referenced service information should be accomplished on the affected sailplanes; and

—AD action should be taken in order to correct this unsafe condition.

What would the proposed AD require? This proposed AD would require you to:

—Inspect the airbrake locking bracket on the rear landing gear box for signs of fatigue (cracks in the paint, paint chips, or cracks in the welding region to the tube) and inspect for proper rigging of the airbrake system;

—Reassemble the airbrake system (if improper rigging is found), and if any sign of fatigue is evident, disassemble the airbrake system, repair or modify any airbrake locking bracket, and accomplish certain adjustments after reassembling the airbrake system; and

—Report any damage found to the FAA.

The FAA is proposing a reporting requirement so we can get an idea of how many sailplanes in the fleet have damaged or incorrectly rigged airbrake systems. We will utilize this information in deciding whether any of the proposed actions should be repetitive or whether we should initiate additional rulemaking.

Cost Impact

How many sailplanes would the proposed AD impact? We estimate that the proposed AD would affect 78 sailplanes in the U.S. registry.

What would be the cost impact of the proposed AD on owners/operators of the affected sailplanes? We estimate the following costs to accomplish the proposed inspection and any necessary reassembly:

Labor cost	Parts cost	Total cost per sailplane	Total cost on U.S. sailplane operators
1 workhour × $60 per hour = $60	Not applicable	$60 per sailplane	$4,680

We estimate the following costs to accomplish any necessary modification that would be required based on the results of the proposed inspection. We have no way of determining the number of sailplanes that may need such modification:

Labor cost	Parts cost	Total cost per sailplane
2 workhours × $60 per hour = $120	The manufacturer will modify the airbrake bracket free of charge.	$120 per sailplane.

Compliance Time of the Proposed AD

What would be the compliance time of the proposed AD? The compliance time of this proposed AD is within the next 30 calendar days after the effective date of this AD.

Why is the compliance time presented in calendar time instead of hours time-in-service (TIS)? Damage to the airbrake locking brake occurs as a result of airplane operation. However, the reason the damage occurs is because of incorrect rigging of the airbrake system. We have determined that a calendar time for compliance is necessary because this incorrect rigging is not directly related to sailplane operation. The chance of this situation occurring is the same for a sailplane with 10 hours time-in-service (TIS) as it is for a sailplane with 500 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in this AD in order to assure that the unsafe condition is addressed on all sailplanes in a reasonable time period.

Why is the compliance time of the proposed AD different than the German AD and the service information? The service information specifies the actions required in this proposed AD ''prior to further flight'' and the German AD mandates these actions ''prior to further flight'' for sailplanes registered for

operation in Germany. The FAA does not have justification for requiring the action prior to further flight. Instead, the FAA has determined that 30 calendar days is a reasonable time period for accomplishing the actions in this proposed AD.

Regulatory Impact

Would this proposed AD impact various entities? 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 proposed rule would not have federalism implications under Executive Order 13132.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed 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) 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 has been placed 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, under 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. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Rolladen Schneider Flugzeugbau GMBH: Docket No. 99–CE–75–AD.

(a) *What sailplanes are affected by this AD?* This AD affects models LS 4 and LS 4a sailplanes, serial numbers 4000 through 4852, certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above sailplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct damage to the airbrake locking bracket caused by asymmetric loads. This condition could result in the pilot's inability to operate the airbrake controls with consequent loss of sailplane control.

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

Action	Compliance time	Procedures
(1) Inspect the airbrake locking bracket on the rear landing gear box for signs of fatigue (cracks in the paint, paint chips, or cracks in the welding region to the tube) and inspect for proper rigging of the airbrake system.	Within the next 30 calendar days after the effective date of this AD..	Inspect for proper rigging in accordance with the procedures contained in the applicable maintenance manual. Inspect the airbrake locking bracket in accordance with the procedures contained in Rolladen Schneider Technical Bulletin No. 4042, dated July 2, 1999.
(2) If any sign of fatigue is evident, accomplish the following:. (i) Disassemble the airbrake system; (ii) Obtain a modified airbrake locking bracket from the manufacturer (2-day turnaround time) and install this bracket; and (iii) Reassemble the airbrake system and accomplish the adjustments listed in the service bulletin	Accomplish all actions prior to further flight after the inspection required in paragraph (d)(1) of this AD.	Accomplish the disassembly, installation, assembly, and adjustments in accordance with procedures contained in the applicable maintenance manual and the procedures in Rolladen Schneider Technical Bulletin No. 4042, dated July 2, 1999.
(3) If no signs of fatigue are found but the airbrake system is incorrectly assembled, disassemble the system and reassemble, including accomplishing the adjustments listed in the service bulletin.	Accomplish all actions prior to further flight after the inspection required in paragraph (d)(1) of this AD.	Accomplish in accordance with procedures contained in the applicable maintenance manual and the procedures in Rolladen Schneider Technical Bulletin No. 4042, dated July 2, 1999.
(4) If no signs of fatigue are found and the airbrake system is correctly assembled, then no further action is required by this AD.	AD complied with	AD complied with.
(5) If any discrepancy is found that requires additional work as required by paragraphs (d)(2) and (d)(3) of this AD, then send information describing the discrepancies found and the follow-on work that was necessary to the FAA.	Within 10 days after the inspection required by this AD or within 10 days after the effective date of this AD, whichever occurs later.	Mail the information to: FAA, Small Airplane Directorate (ACE–112), Attention: Docket No. 99–CE–75–AD, 901 Locust, Room 301, Kansas City, Missouri 64106.

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

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

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 1: This AD applies to each sailplane 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 sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition

addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mike Kiesov, Aerospace Engineer, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4121; facsimile: (816) 329–4091.

(g) *What if I need to fly the sailplane 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 sailplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from Rolladen-Schneider Flugzeugbau GmbH, Muhlstrasse 10, D–63329 Egelsbach, Germany. You may examine these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 2: The subject of this AD is addressed in German AD 1999–270, dated July 22, 1999.

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

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–28832 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–37]

Proposed Amendment of Class E Airspace; Lexington, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM) which proposed to amend the Class E airspace at Lexington, KY. The NPRM is being withdrawn as a result of the determination that additional Class E airspace to contain aircraft executing the Non-Directional Beacon (NDB) Runway 4 (RWY 4) Standard Instrument Approach Procedure (SIAP) developed for Blue Grass Airport is not necessary, as the SIAP is fully contained within existing Class E airspace.

DATES: This proposed rule is withdrawn as of November 9, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Docket No. 00–ASO–37, P.O. Box 20636, Atlanta, Georgia 30320, telephone: (404) 305–5586.

SUPPLEMENTARY INFORMATION:

The Proposed Rule

On September 25, 2000, a Notice of Proposed Rulemaking was published in the **Federal Register** to amend Class E airspace at Lexington, KY, (65 FR 57568) to provide adequate controlled airspace to contain the NDB RWY 4 SIAP developed for Blue Grass Airport. The initial airspace review for Lexington, KY, determined the need for an airspace extension. However, a follow-up review determined the extension was not necessary.

Conclusion

In consideration of the aforementioned determination, action to amend the Lexington, KY, Class E airspace area is withdrawn.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Withdrawal of Proposed Rule

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 00–ASO–37, as published in the **Federal Register** on September 25, 2000, (65 FR 57568), is hereby withdrawn.

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

Issued in College Park, Georgia, on October 24, 2000.

Richard Biscomb,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–28848 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209038–89]

RIN 1545–AO75

Foreign Trusts That Have U.S. Beneficiaries; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains corrections to a notice of proposed rulemaking and notice of public hearing that was published in the **Federal Register** on Monday, August 7, 2000 (65 FR 48185) relating to transfers of property by U.S. persons to foreign trusts having one or more United States beneficiaries.

FOR FURTHER INFORMATION CONTACT: Willard W. Yates at (202) 622–3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking and notice of public hearing that is the subject of this correction is under section 679 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking and notice of public hearing contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking and notice of public hearing (REG–209038–89), that was the subject of FR Doc. 00–19897, is corrected as follows:

1. On page 48187, column 2, in the preamble under the paragraph heading *''Section 1.679–1 U.S. Transferor Treated as Owner of Foreign Trust''*, first full paragraph from the top of the column, last line, the language ''November 6, 2000'' is corrected to read ''August 7, 2000''.

2. On page 48188, column 1, in the preamble under the paragraph heading *''Section 1.679–2: Trusts Treated as Having a U.S. Beneficiary''*, third full paragraph, last line, the language ''November 6, 2000'' is corrected to read ''August 7, 2000''.

3. On page 48188, column 3, in the preamble under the paragraph heading *''Section 1.679–3 Transfers''*, fourth paragraph, last line, the language ''November 6, 2000'' is corrected to read ''August 7, 2000''.

4. On page 48189, column 2, in the preamble under the paragraph heading *''Section 1.679–4 Exceptions to General Rule''*, second full paragraph, third line, the language ''trusts after November 6, 2000. Special'' is corrected to read ''trusts after August 7, 2000. Special''.

5. On page 48189, column 3, in the preamble under the paragraph heading *''Section 1.679–5 Pre-immigration Trusts''*, third full paragraph, last line, the language ''after November 6, 2000'' is corrected to read ''after August 7, 2000''.

6. On page 48189, column 3, in the preamble under the paragraph heading

''Section 1.679–6 Outbound Migrations of Domestic Trusts'', last paragraph in the column, last line, the language ''November 6, 2000'' is corrected to read ''August 7, 2000''.

Cynthia E. Grigsby,

Chief, Regulations Unit, Office of Special Counsel (Modernization and Strategic Planning).

[FR Doc. 00–28424 Filed 11–8–00; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD107–3059, VA122 &123–5054; FRL–6899–2]

Approval and Promulgation of Air Quality Implementation Plans; Maryland and Virginia; Metropolitan Washington, D.C. Ozone Nonattainment Area; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of the comment period.

SUMMARY: EPA is extending the comment period for a series of proposed rulemaking actions published on October 19, 2000. On this date, EPA proposed action on the following Maryland and Virginia provisions as revisions to their respective State Implementation Plans (SIP's): Maryland—New Source Review (65 FR 62675); and Virginia—Source-Specific Permits to Reduce NO_X Emissions in the Metropolitan Washington, D.C. Ozone Nonattainment Area (65 FR 62666).

DATES: Comments must be received on or before November 20, 2000.

ADDRESSES: Comments may be mailed to Makeba Morris, Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT:

1. Maryland—New Source Review: Perry R. Pandya, U.S. EPA Region III, (215) 814–2167.

2. Virginia—Source-Specific Permits to Reduce NO_X emissions in the Metropolitan Washington, D.C. Ozone Nonattainment Area: Michael Ioff, U.S. EPA Region III, (215) 814–2166.

Dated: October 31, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–28705 Filed 11–8–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC048–2022, MD096–3053, MD104–3057, MD106–3058, MD058–3036 & VA083–5038; FRL–6899–1]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, and Virginia; Metropolitan Washington D.C. Ozone Nonattainment Area; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of the comment period.

SUMMARY: EPA is extending the comment period for a series of proposed rulemaking actions published on October 19, 2000. On this date, EPA proposed action on the following District of Columbia, Maryland, and Virginia provisions as revisions to their respective State Implementation Plans (SIP's): District of Columbia—Nitrogen Oxides Budget Program (65 FR 62679); Maryland—Nitrogen Oxides Budget Program (65 FR 62677), Nitrogen Oxides Reduction and Trading Program (65 FR 62671), and Reasonably Available Control Technology for Oxides of Nitrogen (65 FR 62668); and Maryland and Virginia—Post-1996 Rate of Progress Plan for the Metropolitan Washington, D.C. Ozone Nonattainment Area (65 FR 62658).

DATES: Comments must be received on or before November 20, 2000.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT:

1. District of Columbia—Nitrogen Oxides Budget Program; Maryland—Nitrogen Oxides Budget Program, and Maryland—Nitrogen Oxides Reduction and Trading Program: Cristina Fernandez, U.S. EPA Region III, (215) 814–2178.

2. Maryland—Reasonably Available Control Technology for Oxides of Nitrogen: Kelly Bunker, U.S. EPA Region III, (215) 814–2177.

3. Maryland and Virginia—Post-1996 Rate of Progress Plan for the Metropolitan Washington, D.C. Ozone Nonattainment Area: Janice Lewis, U.S. EPA Region III, (215) 814–2185, or Christopher Cripps at (215) 814–2179.

Dated: October 31, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–28706 Filed 11–8–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–6899–4]

Supplemental Information To Support Proposed Approvals of One-Hour Ozone Attainment Demonstrations for Serious Ozone Nonattainment Areas; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and extension of comment period; correction.

SUMMARY: On November 2, 2000 (65 FR 65818), EPA published a notice of availability and reopening of comment period to provide the public with the opportunity to comment on a reasonably available control measures (RACM) analysis that EPA performed. In that document EPA stated that the comment period would be extended 15 additional days, but in the Dates Section there was a typographical error that stated that the comment period would close on November 15, 2001. The EPA's original intent was to extend the comment period 15 additional days, therefore the comment period is only being extended to November 15, 2000.

Dated: November 3, 2000.

Henry C. Thomas,

Acting Director, Office of Air Quality Planning and Standards.

DATES: The comment period closes on November 15, 2000.

FOR FURTHER INFORMATION CONTACT: John Silvasi at (919) 541–5666.

[FR Doc. 00–28810 Filed 11–8–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6898–1]

National Oil and Hazardous Substances Pollution Contingency Plan, National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed direct final deletion of the Ilada Energy Company Superfund

Site (Site) from the National Priorities List (NPL).

SUMMARY: The EPA proposes to delete the Ilada Energy Company Superfund site (Site) from the NPL and requests public comment on this action. The NPL constitutes appendix B to 40 CFR part 300 of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. EPA has determined that the Site currently poses no significant threat to public health or the environment, as defined by CERCLA, and therefore, further remedial measures under CERCLA are not appropriate. We are publishing this proposed rule without prior notification because the Agency views this as a noncontroversial revision and anticipates no dissenting comments. A detailed rationale for this proposal is set forth in the direct final rule, published elsewhere in this issue of the **Federal Register**. If no dissenting comments are received, the deletion will become effective. If EPA receives dissenting comments, the direct final action 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 should do so at this time.

DATES: Comments concerning this Action must be received by December 11, 2000.

ADDRESSES: Comments may be mailed to Gladys Beard, Associate Remedial Project Manager, U.S. Environmental Protection Agency (SR–6J), 77 W. Jackson, Chicago, IL 60604. Comprehensive information on this Site is available through the public docket which is available for viewing at the Site Information Repositories at the following locations: U.S. EPA Region 5, Administrative Records, 77 W. Jackson Boulevard, Chicago, IL 60604 (312) 886–0900, the Cape Giradeau Public Library, 711 N. Clark, Cape Girardeau, MO 63701 and the Illinois Environmental Protection Agency, 1021 North Grand Ave. East, Springfield, Illinois 62794.

FOR FURTHER INFORMATION CONTACT: Jon Peterson, Remedial Project Manager at (312) 353–1264 or Gladys Beard Associate Remedial Project Manager, at (312) 886–7253. Written correspondence can be directed to Ms. Beard at U.S. Environmental Protection Agency, (SR–6J) 77 W. Jackson Blvd., Chicago, IL 60604.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Action which is located in the Rules section of this **Federal Register**.

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321 (c) (2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Dated: October 27, 2000.

Gary Gulezian,

Acting Regional Administrator, Region V.

[FR Doc. 00–28515 Filed 11–8–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket No. 80–286; DA 00–2433]

Comment Sought on Recommended Decision Issued by Federal-State Joint Board on Jurisdictional Separations

AGENCY: Federal Communications Commission.

ACTION: Proposed rules; solicitation of comments.

SUMMARY: This document seeks comment on the Federal-State Joint Board on Jurisdictional Separations' Recommended Decision for instituting an interim freeze of the relationships and jurisdictional allocation factors.

DATES: Submit comments on or before November 24, 2000, and reply comments on or before December 4, 2000.

ADDRESSES: See Supplementary Information section for where and how to file comments.

FOR FURTHER INFORMATION CONTACT: William Cox, (202) 418–7400; TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's copy contractor, International Transcription Service, Inc. (ITS), 1231 20th Street, NW., Washington, DC 20036, telephone 202–857–3800, facsimile 202–857–3805.

On July 21, 2000, the Federal-State Joint Board on Jurisdictional Separations (Joint Board) released a *Recommended Decision* for instituting an interim freeze of the part 36 category relationships and jurisdictional allocation factors. On August 15, 2000, we released a public notice, similar to this *Public Notice*, that sought comment on the *Recommended Decision*. The *Aug. 15 Public Notice* inadvertently was not published in the **Federal Register.** In order to provide adequate notice to interested parties, we now release this *Public Notice* seeking comment on the *Recommended Decision*. Parties who have already filed comments in response to the *Aug. 15 Public Notice* need not refile their comments.

The Joint Board recommended that the Commission institute a five-year freeze of all part 36 category relationships and allocation factors for price cap carriers, and a freeze of the allocation factors for rate-of-return carriers. The Joint Board recommended that the Commission adopt a freeze based on carriers' data from the twelve months prior to the Commission's issuance of an order on the *Recommended Decision*. The Joint Board further recommended that the freeze should be mandatory and apply to all carriers subject to the Commission's part 36 rules. The Joint Board recommended that the freeze remain in effect for five years, or until the Commission takes further action pursuant to a recommendation from the Joint Board, whichever occurs first. During the interim freeze period, the Joint Board recommended that the Joint Board and the Commission continue to review issues regarding separations reform, as specified in the *Recommended Decision*. We seek comment on the Joint Board's recommendations.

The Joint Board also recommended that the Commission further develop the record in this proceeding on the impact of increased intrastate usage on jurisdictional allocations and consumers since 1995. Accordingly, we seek comment on the impact of increased intrastate usage since 1995 on jurisdictional allocations and consumers. The Joint Board noted that one possible explanation for the increase in intrastate usage is the growth in the use of the local network to connect to the Internet since 1995. As a result, we seek comment on the impact of Internet traffic growth on jurisdictional allocations since 1995. We request that companies provide specific information on Internet usage minutes, including the percentage of local minutes and total minutes that represent Internet traffic. This usage information should include data from Internet service providers both affiliated and non-affiliated with incumbent local exchange carriers. If estimates are used in determining these statistics, we request that commenters provide detailed explanation and justification

for these estimates and their underlying assumptions, including all studies and related work papers.

The Joint Board recommended that, if the Commission finds that Internet traffic is jurisdictionally interstate in the proceeding that has been initiated as a result of the remand by the United States Court of Appeals for the DC Circuit on the Commission's *Reciprocal Compensation Ruling*, 64 FR 14203, March 24, 1999, the Commission freeze the local dial equipment minutes (DEM) factor for the duration of the freeze at some substantial portion of the current year level based on data from the twelve months preceding the implementation of the freeze. The Joint Board recommended that, based on the record established in connection with the *Recommended Decision*, the precise percentage of the current year's local DEM should be established according to how much of a reduction in local DEM is warranted in light of any effects that Internet usage has had on jurisdictional allocations or consumers. We seek comment on this recommendation.

Procedures for Filing Comments

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before November 24, 2000, and reply comments on or before December 4, 2000. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

Parties also must send paper copies of their filings to the individuals listed in the attached Service List. Parties must send three paper copies of their filing to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street SW., Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20037.

Pursuant to § 1.1206 of the Commission's rules, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are permitted subject to disclosure.

Separations Joint Board Service List

The Honorable William E. Kennard, Chairman, Federal Joint Board Chairman, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

The Honorable Susan Ness, Commissioner, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

The Honorable Michael K. Powell, Commissioner, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

The Honorable Joseph P. Mettner, Commissioner, Wisconsin Public Service Commission, P.O. Box 7854, Madison, WI 53707–7854.

The Honorable Diane Munns, Commissioner, Iowa Utilities Board, 350 Maple Street, Des Moines, IA 50319–0069.

The Honorable Joan H. Smith, Commissioner, Oregon Public Utility Commission, 550 Capitol Street, NE., Suite 215, Salem, OR 97310–2551.

The Honorable Thomas L. Welch, Chairman, State Joint Board Chairman, Maine Public Utilities Commission, State House Station #18, 242 State Street, Augusta, ME 04333.

Stephen Burnett, Federal Communications Commission, Common Carrier Bureau, Accounting Policy Division, 445 12th Street, SW., Washington, DC 20554.

William Cox, Federal Joint Board Staff Chairman, Federal Communications Commission, Common Carrier Bureau, Accounting Policy Division, 445 12th Street, SW., Washington, DC 20554.

Andrew Firth, Federal Communications Commission, Common Carrier Bureau, Accounting Policy Division, 445 12th Street, SW., Washington, DC 20554.

Genaro Fullano, Federal Communications Commission, Common Carrier Bureau, Accounting Policy Division, 445 12th Street, SW., Washington, DC 20554.

Robert Loube, Federal Communications Commission, Common Carrier Bureau, Accounting Policy Division, 445 12th Street, SW., Washington, DC 20554.

Richard Robinson, Federal Communications Commission, CCB, Accounting Safeguards Division, 445 12th Street, SW., Room 6–C160, Washington, DC 20552.

Gary Seigel, Federal Communications Commission, Common Carrier Bureau, Accounting Policy Division, 445 12th Street, SW., Washington, DC 20554.

Sheryl Todd, Federal Communications Commission, Common Carrier Bureau, Accounting Policy Division, 445 12th Street, SW., Room 5–B540, Washington, DC 20554.

Sharon Webber, Deputy Division Chief, Federal Communications Commission, Common Carrier Bureau, Accounting Policy Division, 445 12th Street, SW., Washington, DC 20554.

Peter Bluhm, Vermont Public Service Board, Drawer 20, 112 State St., 4th Floor, Montpelier, VT 05620–2701.

Ingo Henningsen, Utah Public Service Commission, 160 East 300 South, Box 146751, Salt Lake City, UT 84114–6751.

Sandy Ibaugh, Indiana Utility Regulatory Commission, 302 W. Washington, Suite E–306, Indianapolis, IN 46204.

Lori Kenyon, Regulatory Commission of Alaska, 1016 West 6th Ave., Suite 400, Anchorage, AK 99501–1963.

David Lynch, State Joint Board Staff Chairman, Iowa Utilities Board, 350 Maple Street, Des Moines, IA 50319–0069.

J. Bradford Ramsay, National Association of Regulatory Utility Commissioners, P.O. Box 684, Washington, DC 20044–0683.

Jeffrey J. Richter, Wisconsin Public Service Commission, 610 North Whitney Way, Madison, Wisconsin 53705–2729.

Joel B. Shifman, Maine Public Utilities Commission, State House Station #18, 242 State Street, Augusta, ME 04333.

Fred Sistarenik, New York State Department of Public Service, Communications Division, 3 Empire State Plaza, Albany, NY 12223.
Cynthia Van Landuyt, Oregon Public Utility Commission, 550 Capitol Street, N.E., Suite 215, Salem, OR 97310–2551.

Dated: November 2, 2000

Sharon L. Webber,

Deputy Chief, Accounting Policy Division.

[FR Doc. 00–28606 Filed 11–8–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 00–359]

Federal-State Joint Board on Universal Service: Petition for Forbearance by Operator Communications, Inc. d/b/a Oncor Communications, Inc.

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rules.

SUMMARY: In this document, the Commission seeks comment on proposals to modify the Commission's rules relating to contributions to the federal universal service support mechanisms. In light of significant recent developments in the interstate telecommunications marketplace, such as the entry of Regional Bell Operating Companies into the interexchange services market, we seek comment on whether the existing methodology provides or will provide a competitive advantage to certain carriers in the marketplace. By initiating this rulemaking, we seek to ensure that assessment of contributions to the federal universal service support mechanisms remains competitively neutral, and that the mechanisms continue to meet the statutory requirement to be specific, predictable, and sufficient.

DATES: Comments are due on or before November 30, 2000. Reply comments are due on or before December 14, 2000. Written comments by the public on the proposed and/or modified information collections discussed in this Further Notice of Proposed Rulemaking are due on or before November 30, 2000. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before January 8, 2001.

ADDRESSES: All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Edward C. Springer, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to vhuth@omb.eop.gov. Parties also should send three paper copies of their filing to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, SW., Room 5–B540, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Praveen Goyal, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400. For further information concerning the information collection contained in this Further Notice of Proposed Rulemaking contact Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking in CC Docket No. 96–45 released on October 12, 2000. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

This FNPRM contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

Paperwork Reduction Act

The FNPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection(s) contained in this FNPRM, as required by the PRA, Public Law 104–13. Public and agency comments on the proposed and/or modified information collections discussed in this Further Notice of Proposed Rulemaking are due on or before November 30, 2000. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before January 8, 2001.

Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–0855.

Title: Telecommunications Reporting Worksheet and Associated Requirements, CC Docket No. 96–45.

Form No.: FCC Forms 499A and 499S.

Type of Review: Proposed Revision.

Respondents: Businesses or other for-profit.

Proposal 1: Periodic current Revenue Reports of Proposed Changes to the Contribution Assessment Methodology.

Title	Number of respondents	Hrs. per response	Total annual burden
FCC Form 499A	3500	8	28,000
FCC Form 499S	2000	5.5	11,000
Periodic Current Revenue Reporting (Monthly)	2000	5.5	132,000
Total Annual Burden for Proposal 1			171,000

Cost of Respondents: $0.

Needs and Uses: If adopted, this proposal on which the Commission seeks comment in the FNPRM may entail altering the current revenue reporting requirements to which interstate telecommunications carriers are subject under §§ 54.709 and 54.711 of the Commission's rules. Under one proposed contribution assessment methodology, carriers would determine the amount of their contributions to the universal service fund by applying the contribution factor as currently calculated to their *current* end-user revenues, as opposed to their prior-year end-user revenues. As a result, this contribution methodology would require periodic current revenue reports in addition to the two historical revenue reports already required semi-annually, increasing the number of revenue filings carriers must make to USAC.

Proposal 2: Annual and Quarterly Reports of Proposed Changes to the Contribution Assessment Methodology.

Title	Number of respondents	Hrs per response	Total annual burden
FCC Form 499A	3500	8	28,000
Report of Revenues (Quarterly)	2000	5.5	44,000
Total Annual Burden for Proposal 2			72,000

Cost to Respondents: $0.

Needs and Uses: If adopted, this proposal on which the Commission seeks comment in the FNPRM may entail altering the current revenue reporting requirements to which interstate telecommunications carriers are subject under §§ 54.709 and 54.711 of the Commission's rules. This proposed contribution assessment methodology would shorten the interval between the accrual of revenues by carriers and the assessment of universal service contributions based on those revenues from a range of 12 to 18 months to a range of 3 to 6 months. Under this proposal, carriers would continue to file FCC Form 499A annually as they are required to do under the existing methodology. Carriers would, however, begin to report their revenues for each quarter by the beginning of the second month of the first following quarter. By the 20th day of the second month of the first following quarter, USAC would prepare a quarterly contribution base for the second following quarter. Finally, as it does currently, the Commission would release a proposed contribution factor for the second following quarter in the last month of the first following quarter. Under this proposal, carriers' filings increase from the two semi-annual filings currently required to one annual filing and four quarterly filings, for a total of five revenue filings per year.

Synopsis of FNPRM

I. Introduction

1. In this Further Notice of Proposed Rulemaking (FNPRM), we seek comment on proposals to modify the Commission's rules relating to contributions to the federal universal service support mechanisms. Currently, contributions to the universal service support mechanisms are based on carriers' interstate and international end-user telecommunications revenues from the prior year. In light of significant recent developments in the interstate telecommunications marketplace, such as the entry of Regional Bell Operating Companies (RBOCs) into the interexchange services market under section 271 of the Communications Act, we seek comment on whether the existing methodology provides or will provide a competitive advantage to certain carriers in the marketplace.

2. By initiating this rulemaking, we seek to ensure that assessment of contributions to the federal universal service support mechanisms remains competitively neutral, and that the mechanisms continue to meet the statutory requirement to be specific, predictable, and sufficient. Specifically, in this rulemaking, we seek comment on the following: (1) A proposed methodology for the assessment of universal service contributions based on current revenues; (2) a proposed methodology that would reduce the current interval between the accrual of revenues and the collection of universal service contributions based on those revenues; and (3) other proposals for the reporting of carrier revenues and the collection of contributions that maintain the competitive neutrality of contributions to the federal universal service support mechanisms, and that enable the mechanisms to continue to meet the statutory requirement to be specific, predictable, and sufficient.

II. Proposals To Modify the Universal Service Assessment Methodology

A. Contribution Assessment Generally

3. In light of significant recent developments in the interstate telecommunications marketplace, such as the entry of RBOCs into the interexchange services market under section 271 of the Act, we seek comment generally on whether and how to modify the existing contribution assessment methodology. Specifically, we ask parties to comment on whether, as a result of changes in the interstate marketplace, the existing methodology provides or will provide a competitive advantage to certain carriers in the marketplace.

4. Carriers have argued that, as a result of the existing methodology which assesses contributions based on carriers' interstate end-user telecommunications revenues from the prior year, new entrants to the long distance marketplace, particularly RBOCs, may have a competitive advantage as they gain entry into the long distance market. They argue that, during the first year of post in-region interLATA entry, the new entrant is not required to contribute to the universal service fund on its interstate end-user revenues generated from the new in-region interexchange service. If the new entrants do not accrue a portion of their revenues for making universal service contributions during the following year that will be based on those revenues, such new entrants may be able to undercut the prices offered by established providers.

5. In subsequent years, to the extent new entrants increase their long distance market share and recover universal service contributions against current end-user revenues, the revenue base against which they recover their universal service contributions would remain greater than the revenue base against which their contributions are assessed, creating a potential for a continuing competitive advantage. Similarly, carriers have also expressed concern that, under the existing contribution methodology, carriers with decreasing interstate revenues may have a competitive disadvantage as compared to carriers with increasing interstate revenues. As interexchange carriers lose market share, they may have to recover from a declining current revenue base

their universal service contributions assessed against a larger prior-year revenue base.

6. We therefore ask whether and how to modify the existing contribution assessment methodology, in light of the recent developments in the long distance market. We seek comment on whether the current methodology would place interexchange carriers at a competitive disadvantage against RBOCs as they gain entry into the long distance market. We seek comment on whether any such competitive advantage might impede the development of competition in the local exchange marketplace, for example, by giving incumbent local exchange carriers entering the long distance marketplace a competitive advantage in the provision of bundled local and long distance service offerings. We further seek comment on whether the contribution methodology disadvantages carriers with declining shares of interstate revenues as compared to carriers with increasing shares of interstate revenues. Commenters should also address whether any such competitive advantage under the current recovery methodology would render the methodology inconsistent with section 254's requirement that contributions be ''equitable and nondiscriminatory.''

7. The preceding discussion assumes that new entrants into the interstate telecommunications marketplace are likely to pay universal service contributions out of current period revenue. We seek comment on the likelihood that they instead would collect a surcharge in their first periods of operation in order to accrue revenue for the purpose of making universal service contributions in subsequent periods. To the extent new entrants follow such a procedure, we seek comment on whether and how established carriers already contributing to the universal service mechanisms would nonetheless be disadvantaged under the existing contribution assessment methodology.

8. In the discussion, we seek comment on two specific proposals to change the universal service recovery methodology. We also invite commenters to propose any other alternatives for assessment of contributions that are competitively neutral and consistent with the Act. In particular, we request comment from the state members of the Federal-State Joint Board on Universal Service and from USAC on the issues raised in this Further Notice of Proposed Rulemaking.

B. Proposal To Assess Contributions Based on Current Revenues

9. We seek comment on a proposal to adopt an assessment methodology based on current-year revenues, as suggested by one carrier. Under this proposal, the contribution factor would continue to be set quarterly in the same manner as it is currently, based on the ratio of estimated federal support to total end-user telecommunications revenues. The revenue base used in calculating the contribution factor would continue to be determined by USAC as it is currently, based on semi-annual filings of the FCC Form 499 Telecommunications Reporting Worksheet by interstate telecommunications carriers. Carriers, however, would calculate their contributions by applying the factor to their *current* end-user revenues, as opposed to their prior-year end-user revenues. Assuming a level or upward trend in industry revenues, the application of a contribution factor based on prior-year revenues to current revenues should allow USAC to recover sufficient contributions from the industry as a whole in order to fund the universal service support mechanisms. We seek comment on whether this proposal would be competitively neutral and consistent with the requirements of section 254 of the Act, including the requirements that the Commission's universal service support mechanisms be ''equitable and nondiscriminatory'' and ''specific, predictable, and sufficient.''

10. In particular, we seek comment on the potential effects of such a methodology on the integrity of the universal service fund, including whether a potential shortfall in the fund might result. Under the existing contribution assessment methodology, the revenue base used in calculating the contribution factor and the revenue base against which contributions are assessed are the same. Under the proposal on which we seek comment here, which would apply contribution factors as presently calculated to current revenues, the revenue base used in calculating the contribution factor would be one year prior to the revenue base against which contributions would be assessed. We seek comment on whether a decline in industry-wide interstate telecommunications revenues could generate a shortfall in the universal service fund under such a methodology, and whether the possibility of such a shortfall would render this proposal inconsistent with the Act's mandate of a ''sufficient'' fund. We also seek comment on whether certain events or market conditions, such as increased use of Internet Protocol (IP) telephony, changes in international settlement rates, or economic recession, might result in a dramatic or systemic decline in interstate end-user telecommunications revenues, and on the likelihood of such events or conditions and a resultant decline.

11. We also seek comment on whether certain safeguards might be adopted with this proposal to ensure universal service fund integrity. Specifically, we ask commenters to address whether a quarterly ''true-up'' mechanism could be implemented with this proposal to allow USAC to adjust the contribution assessment rate retrospectively, and whether mid-quarter contribution factor adjustments would prevent a shortfall in the fund caused by a systemic or extended decline in revenues. We also seek comment on the effectiveness of the ''true-up'' safeguard in light of the lag that could occur between USAC's detection of an impending shortfall in the fund and the Commission's establishment of an adjusted mid-quarter contribution factor. Commenters should also discuss the method by which USAC could project whether there would be a shortfall in the fund under this proposed recovery methodology, and what methodology should be used to adjust the contribution factor mid-quarter in the event of a projected shortfall. Finally, commenters should discuss any other possible safeguards they believe should be included with such a proposal, and explain why such safeguards should be implemented.

12. Because this contribution methodology would require periodic current revenue reports in addition to the two historical revenue reports already required semi-annually, it would increase the number of revenue filings carriers must make to USAC. Consequently, this contribution recovery methodology may also pose significant administrative burdens for carriers and for USAC, which we ask commenters to address. Specifically, we seek comment on the frequency with which carriers should report revenues to USAC under this proposal, the types of burdens carriers will face in periodically reporting revenues to USAC, and whether the costs of such reporting are outweighed by the potential benefits posed by the proposed methodology. Where possible, commenters, especially small businesses, should quantify the costs and benefits of this proposal. We also seek comment on how USAC's billing and collection procedures would need to be revised to accommodate this

contribution methodology. Currently, USAC calculates individual contributions by multiplying the quarterly contribution factor by the applicable period of historic quarterly revenues. USAC then bills contributors in equal monthly installments at a fixed amount each month. We seek comment on whether and/or how this procedure should be modified under an assessment methodology based on current revenues.

13. We seek comment on the incentives carriers may have under this proposed recovery methodology to report their current revenues in an accurate and timely manner. For example, this proposal may create incentives for carriers to underreport revenues for the early months of a reporting period in an attempt to reduce their current contribution obligations, thereby freeing capital for other uses, such as interest-bearing investments. Such carriers could then overreport revenues in the later months of a reporting period so that their total revenues for the reporting period are accurate. We seek comment on the extent to which this proposal creates such incentives and the likelihood that a shortfall in the fund might result. We also seek comment on whether changes should be made to USAC's auditing abilities to ensure accurate reporting, and on any other administrative mechanisms that might be implemented to ensure accurate reporting of current revenues. Commenters should address measures USAC should take to verify carrier revenue reports, and what burdens or costs USAC would bear in performing such verifications. Parties should explain the procedures that should be followed where a carrier's current revenue reports do not reconcile with its report of annual revenues filed the following April, and whether penalties should be imposed on such a carrier. We also seek comment on whether this proposal would increase the likelihood of delinquent payments by carriers, and thus a shortfall in the fund. We invite comment on possible administrative mechanisms to minimize any such potential for delinquent payments.

14. We seek comment on how to make the transition from the existing contribution assessment methodology to a methodology based on current revenues, if we were to adopt this proposal for assessment of universal service contributions. In particular, we ask commenters to address when assessments based on current revenues should begin under the proposal, and how to ''close out'' the assessment of contributions under the existing methodology. We also seek comment on whether a one-time over-collection of funds might be necessary to make the transition to the proposed methodology, and whether such an over-collection would need to be maintained going forward in order to safeguard fund integrity.

15. Finally, we invite commenters, especially small businesses, to discuss any additional advantages, disadvantages, or other implementation issues presented by this proposed contribution assessment methodology. Commenters should indicate whether the costs of implementing this proposal outweigh the benefits and quantify such claims, where possible. Furthermore, in light of the issues presented by this proposal, commenters should discuss whether it would meet the requirements of section 254 of the Act, including the requirement that the Commission's universal service support mechanisms be ''specific, predictable, and sufficient.''

C. Universal Service Contribution Assessment With a Shorter Interval

16. Under the existing assessment methodology, the interval between the accrual of revenues by carriers and the assessment of universal service contributions based on those revenues ranges from 12 to 18 months. We seek comment on a proposal to revise the existing assessment methodology to reduce this interval to three to six months.

17. Under this proposal, carriers would continue to file FCC Form 499A annually as they are required to do under the existing methodology. Carriers would, however, begin to report their revenues for each quarter by the beginning of the second month of the first following quarter. By the 20th day of the second month of the first following quarter, USAC would prepare a quarterly contribution base for the second following quarter. Finally, as it does currently, the Commission would release a proposed contribution factor for the second following quarter in the last month of the first following quarter. Thus, for example, revenues for January 2001 through March 2001, namely for 1Q 2001, would be reported by May 1, 2001, the beginning of the second month in 2Q 2001. USAC would estimate a quarterly contribution base using these 1Q 2001 revenues by May 20, 2001, the 20th day of the second month in 2Q 2001. Finally, the Commission would release a proposed contribution factor for 3Q 2001, based on 1Q 2001 revenues, at the beginning of June 2001 (the last month of 2Q 2001).

18. Like the existing assessment methodology, and unlike an assessment methodology based on current revenues, this proposal would assess contributions against the same revenue base used to calculate the contribution factor. We seek comment on whether this reduced interval between the accrual of revenues and the assessment of contributions would result in a methodology that is competitively neutral and ''specific, predictable, and sufficient,'' consistent with section 254 of the Act. This methodology would also reduce the interval between revenue accrual and contribution assessment from the current interval of twelve to eighteen months to an interval of three to six months. We seek comment on whether this proposal poses any concerns regarding universal service fund integrity.

19. The shortened schedule under this proposal would give USAC 20 days to compile quarterly filing information and estimate the contribution base. Parties are asked to address whether this schedule allows sufficient time for USAC to perform these functions. In particular, parties should address whether carriers could file reliable revenue information within 30 days of the close of a quarter. USAC is asked to comment on the extent to which this schedule would increase the likelihood of late filings, the extent to which data would have to be estimated for late filings, and the likelihood and size of resulting over-collections or under-collections.

20. Under this proposal, carriers' filings increase from two semi-annual filings to one annual filing and four quarterly filings, for a total of five revenue filings per year. We seek comment, especially from small businesses, on whether the costs associated with the increased reporting requirements under this proposal outweigh the benefits of the reduced interval between revenue accrual and contribution assessment. We also invite commenters to address whether this proposal should be offered as an optional alternative to the current assessment methodology, rather than as a replacement for it. Commenters should explain whether making this proposal optional adequately addresses concerns about the burden it would impose. Commenters should also address whether offering this proposal as an option alongside the current assessment methodology would result in a methodology that is competitively neutral and ''specific, predictable, and sufficient,'' consistent with section 254 of the Act.

21. As with the first proposal discussed, we seek comment on the incentives carriers have under this proposed methodology to report their quarterly revenues in an accurate and timely manner. In particular, commenters should address whether this proposal minimizes carriers' incentives to underreport revenues for the early quarters of a reporting year. We also seek comment on whether changes should be made to USAC's auditing abilities to ensure accurate quarterly reporting. In addition, we invite comment on possible administrative mechanisms that might be implemented to ensure accurate reporting of quarterly revenues, including the use of penalties. We also ask commenters to address whether such a methodology would increase the likelihood of delinquent payments by carriers, and thus a shortfall in the fund. We seek comment on possible administrative mechanisms that might be implemented to minimize any such potential for delinquent payments, including the use of penalties.

22. We also seek comment on how to make the transition from the existing assessment methodology to the proposal discussed here. In particular, we ask commenters to address when assessments based on quarterly revenues should begin under the proposal, and how to ''close out'' the assessment of contributions under the existing methodology. We also seek comment on whether a one-time over-collection of funds might be necessary to make the transition to the proposed methodology. In addition, we ask commenters to address how to make the transition from the existing methodology to the proposal discussed here if that proposal is made optional.

23. Finally, we invite commenters, especially small businesses, to discuss any additional advantages, disadvantages, or other implementation issues presented by this proposed contribution methodology. Commenters should indicate whether the costs of implementing this proposal outweigh the benefits and quantify such claims, where possible. Furthermore, commenters should discuss whether it would meet the requirements of section 254 of the Act, including the requirements that the Commission's universal service support mechanisms be ''equitable and nondiscriminatory'' and ''specific, predictable, and sufficient.''

D. Other Proposed Universal Service Contribution Assessment Methodologies

24. In addition to the two proposals discussed, we invite commenters, especially small businesses, to suggest other alternative assessment methodologies. For example, some parties have suggested the use of a contribution methodology that requires carriers to recover their contributions through a fixed-percentage end-user surcharge. We invite commenters to address the legal and policy issues associated with such an approach. Specifically, we encourage commenters to address the extent to which consumers will benefit from such an approach. Commenters should explain the operation of this alternative, or any other alternative, including a plan for transition from the existing methodology to the proposed alternative.

25. We ask commenters offering alternative proposals to address the following questions in detail. (1) Is the proposed alternative consistent with the requirements of section 254 of the Act, including the requirements that the Commission's universal service support mechanisms be ''equitable and nondiscriminatory'' and ''specific, predictable, and sufficient?'' (2) Does the alternative protect the integrity of the universal service fund, in particular by guarding against a shortfall in the fund? (3) To the extent there are concerns about the competitive neutrality of the universal service assessment methodology, does the alternative address these concerns, and is it more competitively neutral than the current methodology and other proposed methodologies? (4) Does the alternative minimize burdens, including recordkeeping and reporting requirements, on carriers? (5) How should the alternative be implemented, and how should the Commission transition from the existing contribution assessment methodology to the alternative? (6) Finally, what are the advantages and disadvantages of any such alternative (quantifying the associated costs and benefits where appropriate)?

III. Procedural Matters

A. Ex Parte

26. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.

B. Initial Paperwork Reduction Act of 1995 Analysis

27. This FNPRM contains either a proposed or modified information collection. As part of a continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this FNPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this FNPRM; OMB comments are due 60 days from the date of publication of this FNPRM in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

C. Initial Regulatory Flexibility Analysis

28. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM provided below. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for, and Objectives of, the Proposed Rules

29. The Telecommunications Act of 1996 requires that ''[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.'' This FNPRM addresses issues of the methodology that should be used to assess carriers' contributions to the universal service support mechanisms. We desire to adopt rules for an assessment methodology that best meets the statute's requirements that contributions be equitable and

nondiscriminatory and that the universal service support mechanisms be specific, predictable, and sufficient. We also seek, wherever possible, to minimize the regulatory burden on affected parties.

2. Legal Basis

30. The legal basis as proposed for this FNPRM is contained in section 254 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. 254.

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

31. The Commission's contributor reporting requirements apply to a wide range of entities, including all telecommunications carriers and other providers of interstate telecommunications services that offer telecommunications services for a fee. Thus, we expect that the rules adopted in this proceeding could have a significant economic impact on a substantial number of small entities. Of the estimated 5,000 filers of the Telecommunications Reporting Worksheet, FCC Form 499, we do not know how many are small entities, but we offer below a detailed estimate of the number of small entities within each of several major carrier-type categories.

32. To estimate the number of small entities that would be affected by this economic impact, we first consider the statutory definition of ''small entity'' under the RFA. The RFA generally defines ''small entity'' as having the same meaning as the term ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA. The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees. We first discuss the number of small telephone companies falling within these SIC categories, then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

33. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its Carrier Locator report, derived from filings made in connection with the Telecommunications Relay Service (TRS). According to data in the most recent report, there are 4,144 interstate carriers. These carriers include, *inter alia,* incumbent local exchange carriers, competitive local exchange carriers, competitive access providers, interexchange carriers, other wireline carriers and service providers (including shared-tenant service providers and private carriers), operator service providers, pay telephone operators, providers of telephone toll service, wireless carriers and services providers, and resellers.

34. We have included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

35. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census (the Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.'' For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the decisions and rule changes adopted in this proceeding.

36. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rule changes adopted in this proceeding.

37. *Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service Providers, and Resellers.* Neither the Commission nor the SBA has developed a definition particular to small LECs, interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), or resellers. The closest applicable definition for these carrier-types under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service. According to our most recent data, there are 1,348 incumbent LECs, 212 CAPs and competitive LECs, 171 IXCs, 24 OSPs, 388 toll resellers, and 54 local resellers. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are

unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 1,348 incumbent LECs, 212 CAPs and competitive LECs, 171 IXCs, 24 OSPs, 388 toll resellers, and 54 local resellers that may be affected by the decisions and rule changes adopted in this proceeding.

38. *Wireless (Radiotelephone) Carriers.* The SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992. According to the SBA's definition, a small business radiotelephone company is one employing no more than 1,500 persons. The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the decisions and rule changes adopted in this proceeding.

39. *Cellular, PCS, SMR, and Other Mobile Service Providers.* In an effort to further refine our calculation of the number of radiotelephone companies that may be affected by the rules adopted herein, we consider the data that we collect annually in connection with the TRS for the subcategories Wireless Telephony (which includes Cellular, PCS, and SMR) and Other Mobile Service Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to these broad subcategories, so we will utilize the closest applicable definition under the SBA rules—which, for both categories, is for telephone companies other than radiotelephone (wireless) companies. To the extent that the Commission has adopted definitions for small entities providing PCS and SMR services, we discuss those definitions below. According to our most recent TRS data, 808 companies reported that they are engaged in the provision of Wireless Telephony services and 23 companies reported that they are engaged in the provision of Other Mobile Services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of Wireless Telephony Providers and Other Mobile Service Providers, except as described below, that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 808 small entity Wireless Telephony Providers and fewer than 23 small entity Other Mobile Service Providers that might be affected by the decisions and rule changes adopted in this proceeding.

40. *Broadband PCS Licensees.* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added, and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F. However, licenses for Blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we estimate that the number of small broadband PCS licenses will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of at least 183 small PCS providers as defined by the SBA and the Commissioner's auction rules.

41. *SMR Licensees.* Pursuant to § 90.814(b)(1) of the Commission's rules, the Commission has defined ''small entity'' in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. The definition of a ''small entity'' in the context of both 800 MHz and 900 MHz SMR has been approved by the SBA. Any rules proposed in this proceeding may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. We assume, for purposes of this IRFA, that all of the extended implementation authorizations may be held by small entities, that may be affected by the decisions and rule changes adopted in this proceeding.

42. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees that may be affected by the decisions and rule changes adopted in this Order includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. The Commission, however, has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of this IRFA, that all of the licenses may be awarded to small entities who may be affected by the decisions and rule changes adopted in this proceeding.

43. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to radiotelephone

communications companies. According to the Census Bureau, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, if this general ratio continues to 2000 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

44. *220 MHz Radio Service—Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order,* 62 FR 16004 (April 3, 1997), this Commission adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. 908 licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. As of January 22, 1999, the Commission announced that it was prepared to grant 654 of the Phase II licenses won at auction.

45. *Paging.* The Commission has proposed a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. Under the proposal, a small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Because the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to the most recent Carrier Locator data, 303 carriers reported that they were engaged in the provision of either paging or messaging services, which are placed together in the data. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 303 small paging carriers that may be affected by the decisions and rule changes under consideration in this proceeding. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

46. *Narrowband PCS.* The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

47. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

48. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service. Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA definition.

49. *Private Land Mobile Radio (PLMR).* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. The Commission has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area.

50. The Commission is unable at this time to estimate the number of, if any, small businesses which could be impacted by the rules. However, the Commission's 1994 Annual Report on PLMRs indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the proposed rules in this context could potentially impact every small business in the United States.

51. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will utilize the SBA's definition applicable to radiotelephone companies—*i.e.*, an entity with no more than 1,500 persons. We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

52. *Offshore Radiotelephone Service.* This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of

Mexico. At present, there are approximately 55 licensees in this service. We are unable at this time to estimate the number of licensees that would qualify as small entities under the SBA's definition for radiotelephone communications.

53. *Wireless Communications Services.* This service can be used for fixed, mobile, radio location and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees that may be affected by the decisions and rule changes under consideration in this proceeding includes these eight entities.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

54. As currently structured, telecommunications carriers and other service providers having interstate revenues are required to file semiannually the Telecommunications Reporting Worksheet, which includes their reporting of end-user telecommunications revenues for purposes of the federal universal service support mechanisms. Any decisions or rule changes adopted in this proceeding carry the potential to increase the reporting and recordkeeping requirements on telecommunications service providers regulated under the Communications Act. For example, two of the possible alternatives to the current universal service contribution assessment methodology discussed, (1) basing universal service contributions on current year revenues and (2) reducing the time period between accrual of revenues and the assessment of universal service contributions based on those revenues, would entail additional monthly or quarterly reporting of end-user telecommunications revenues. Any such additional reporting requirements could potentially require the use of professional skills, including legal and accounting expertise. At this point, until we receive more data, we are unable to estimate the costs of compliance with these or other possible universal service assessment methodologies upon small telecommunications service providers that might be affected by any of the proposals discussed in the FNPRM. Entities, especially small businesses, are encouraged to file comments identifying and quantifying the costs of the two contribution assessment methodologies proposed and any other alternative methodologies during this proceeding.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

55. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

56. To minimize the significant economic impact on carriers, including carriers which are small entities, this FNPRM proposes two alternative contribution assessment methodologies: (1) Basing contributions on current year revenues and (2) reducing the time period between accrual of revenues and the assessment of universal service contributions based on those revenues. These two alternatives impose different revenue reporting requirements. For example, the current year methodology proposed would require carriers to submit reports of their current revenues regularly in addition to the semiannual reports already required of revenues from the prior year in Forms 499A and 499S. The other methodology proposed, however, would increase filing burdens to a lesser degree, requiring quarterly reporting of revenue data and the annual filing of the Form 499A. These alternatives would require the same reporting requirements for both large and small entities. Therefore, this Notice also seeks comment on other alternative contribution assessment methodologies that might minimize recordkeeping and reporting burdens on carriers, including small entities. The final alternative may be to leave the current contribution assessment methodology in place. This alternative will depend on the record developed in this proceeding.

6. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

57. None.

D. Comment Dates and Filing Procedures

58. We invite comment on the issues and questions set forth. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments as follows: comments are due November 30, 2000 and reply comments are due December 14, 2000. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998.

59. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

60. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Parties also should send three paper copies of their filing to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, SW., Room 5–B540, Washington, DC 20554.

61. Parties who choose to file by paper should also submit their comments on diskette to Sheryl Todd, Accounting Policy Division, Common

Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, SW., Room 5–B540, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM-compatible format using Microsoft Word 97 for Windows or a compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read-only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding, including the lead docket number in the proceeding (CC Docket No. 96–45), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase (''Disk Copy Not an Original.'') Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20037.

62. Written comments by the public on the proposed and/or modified information collections discussed in this FNPRM are due November 30, 2000. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before January 8, 2001. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Edward C. Springer, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to vhuth@omb.eop.gov.

IV. Ordering Clauses

63. Pursuant to the authority contained in sections 1, 4(i), 4(j), 254, and 403, of the Communications Act of 1934, as amended, that this Further Notice of Proposed Rulemaking is adopted, that Comments are Requested as described, and that Notice is Hereby Given of proposed amendments to parts 54 of the Commission's rules, as described in this Further Notice of Proposed Rulemaking.

64. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–28728 Filed 11–8–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 00–44; FCC 00–343]

Extension of the Filing Requirement for Children's Television Programming Reports (FCC Form 398)

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks comment on the tentative conclusion that broadcasters who maintain internet websites should be required to post their completed quarterly Children's Television Programming Reports (FCC Form 398) on these sites. The FCC 398 is required to be filed by commercial television broadcast stations each quarter. This form is used to provide information on the efforts of commercial television stations to provide children's educational and informational programs aired to meet its obligation under the Children's Television Act of 1990 (CTA). Although the Children's Television Programming Reports are available in a central location on the FCC's website, members of the public may look first to their local broadcast station for information about programming at the station, making station website posting useful.

DATES: Comments must be filed on or before December 18, 2000; reply comments must be filed on or before January 17, 2001. Written comments by the public on the proposed information collections are due on or before December 18, 2000. Written comments must be submitted by the Office of Management and Budget (PMB) on the proposed information collection(s) on or before January 8, 2001.

FOR FURTHER INFORMATION CONTACT: Kim Matthews, Policy and Rules Division, Mass Media Bureau, at (202) 418–2130, TTY (202) 418–2989. For additional information concerning the information collection(s) contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the *Further Notice of Proposed Rule Making* (''*FNPRM*'') in MM Docket No. 00–44, FCC 00–343, adopted on September 14, 2000, and released on October 5, 2000. The full text of this decision is available for inspection and copying during regular business hours in the FCC Reference Center, 445 Twelfth Street, SW, Room CY–A257, Washington DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 445 Twelfth Street, SW, Room CY–B402, Washington DC. The complete text is also available under the file name fcc00343.pdf on the Commission's Internet site at *www.fcc.gov.*

This document contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). The general public and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

Electronic Access and Filing Addresses

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,*, and should include the following words in the body of the message, ''get form, <your e-mail address>.'' A sample form and directions will be sent in reply.

Paperwork Reduction Act

This document contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in the *FNPRM,* as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this *FNPRM*; OMB comments are due January 8, 2001. Comments should address (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) ways to enhance the quality, utility, and clarity of the information collected; (c) ways to minimize the burden of the collection of information on the respondents, including the use of automated

collection techniques or other forms of information technology.

OMB Control Number: 3060–XXXX.

Title: FNPRM—Extension of the Filing Requirement for Children's Television Programming Reports.

Form No: FCC Form 398.

Type of Review: revision of existing collection.

Respondents: business or other for-profit.

Number of respondents: 1,250.

Estimated Time Per Response: 6 hours.

Total Annual Burden: 30,000 hours.

Total Annual Costs: $489,600.

The estimated time, burden and costs are based upon the existing burdens for the FCC 398. This burden could increase depending on what requirements are ultimately adopted.

Needs and Uses: The FCC 398 is required to be filed by commercial television broadcast stations each quarter. This form is used to provide information on the efforts of commercial television stations to provide children's educational and informational programs aired to meet its obligation under the Children's Television Act of 1990 (CTA). The FCC 398 facilitates consistency of reporting among all licensees and assist in efforts by the public and the Commission to monitor station compliance with the CTA. The FNPRM seeks comments on whether broadcasters should be required to provide their completed Children's Television Programming Reports at their own websites. Depending on what requirements are ultimately adopted, there may be an increase in the burden for this form.

Synopsis of Further Notice of Proposed Rulemaking

1. We tentatively conclude that if a broadcaster maintains a website, it must post its quarterly report on that site at the same time that it places it in the station's public file. Although the Children's Television Programming Reports are available in a central location on the FCC's website, we believe that members of the public may look first to their local broadcast station, rather than the Commission, for information about the programming of the station. Our inclination is to allow stations, at their option, either to post the quarterly reports on the station's own internet website, or to create a link on the station's website directly to either the FCC's children's television webpage or to the station's most recent quarterly report on the FCC's children's television website. We note that NAB argues that it may cost stations more to provide the required form at their websites. Allowing stations simply to create a link to the FCC's website provides a less costly alternative. This option also responds to NAB's concern about any unnecessary duplication of effort associated with making the reports available both on the FCC's and the station's websites. Broadcasters must currently retain a paper copy of the report in their station public inspection file until final action has been taken on the station's next renewal of license. We seek comment on whether broadcasters that elect to maintain the reports on their own station websites should be required to maintain these reports on the website until final action has been taken on the station's next license renewal application.

2. Because the Commission's own website provides a central location where the public can access reports from all stations in their community and across the country, we want to ensure that the information on our website is easily accessible by the public. In response to a request from CME *et al.,* the Commission staff has created a link directly from its internet homepage to its children's television webpage. We note that interested organizations can create links directly from their own websites to our children's television website if they choose.

Administrative Matters

3. *Comments and Reply Comments.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, §§ 1.415, 1.419, interested parties may file comments on or before December 18, 2000 and reply comments on or before January 17, 2001. Comments may be filed using the Commission's Electronic Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

4. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, postal service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form, <your e-mail address.'' A sample form and directions will be sent in reply.

5. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W.; TW–A325, Washington, DC 20554.

6. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Wanda Hardy, 445 Twelfth Street, S.W.; 2–C221, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number (MM Docket No. 00–44), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 445 Twelfth Street, S.W.; CY–B402, Washington, DC 20554.

7. *Ex Parte Rules.* This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's Rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

8. *Initial Regulatory Flexibility Analysis.* With respect to the *FNPRM,* an Initial Regulatory Flexibility Analysis (''IRFA''). As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an IRFA of the expected impact on small entities of the proposals contained in this *FNPRM.* Written public comments are requested on the IRFA. In order to fulfill the mandate of the Contract With America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, we ask a number of

questions in our IRFA regarding the prevalence of small business in the television broadcasting industry. Comments on the IRFA must be filed in accordance with the same filing deadlines as comments on the *FNPRM,* but they must have a distinct heading designating them as responses to the IRFA. The Commission's Consumer Information Bureau shall send a copy of this *FNPRM,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981), as amended.

9. *Initial Paperwork Reduction Act Analysis.* This *FNPRM* may contain either proposed or modified information collections. As part of our continuing effort to reduce paperwork burdens, we invite the general public to take this opportunity to comment on the information collections contained in this *FNPRM,* as required by the Paperwork Reduction Act of 1996. Public and agency comments are due at the same time as other comments on the *FNPRM.* Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) ways to enhance the quality, utility, and clarity of the information collected; and (c) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 Twelfth Street, S.W., Room C–1804, Washington, DC 20554, or via the Internet to *jboley@fcc.gov* and to Edward Springer, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW, Washington, DC 20503 or via the Internet to *edward.springer@omb.eop.gov.*

Initial Regulatory Flexibility Analysis

10. As required by the Regulatory Flexibility Act, 5 U.S.C. 603 (''RFA''), the Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') of the expected impact on small entities of the proposals contained in the attached *FNPRM.* Written public comments are requested with respect to the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of the *FNPRM,* but they must have a separate and distinct heading, designating the comments as responses to the IRFA. The Commission shall send a copy of this *FNPRM,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with the RFA, 5 U.S.C. 603(a).

a. *Reasons Why Agency Action is Being Considered.* Our goal in commencing this proceeding is to seek comment on the tentative conclusion to require commercial television broadcasters that maintain a website to post their quarterly Children's Television Programming Reports on that site at the same time that they place the reports in the station's public inspection file. We also seek comment on whether broadcasters should be required to maintain the reports on the website until final action has been taken on the station's next license renewal.

b. *Need For and Objectives of the Proposed Rule Changes.* Although the Children's Television Programming Reports are available in a central location on the FCC's website, the FCC believes that members of the public may look first to their local broadcast station, rather than the Commission, for information about the programming of the station. We invite comment on this view and ask commenters to provide detailed information on any costs or other burdens associated with requiring those stations that maintain websites to post their quarterly reports on the sites.

c. *Legal Basis.* Authority for the actions proposed in the *FNPRM* may be found in sections 4(i) and 303, 307, and 336(d) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, 307, and 336(d), and in the Children's Television Act of 1990.

d. *Recording, Recordkeeping, and Other Compliance Requirements.* The *FNPRM* invites comment on the tentative conclusion to require commercial television broadcasters that maintain a website to post their quarterly Children's Television Programming Reports on that site at the same time that they place the reports in the station's public inspection file. We also seek comment on whether broadcasters should be required to maintain the reports on the website until final action has been taken on the station's next license renewal.

e. *Federal Rules that Overlap, Duplicate, or Conflict with the Proposed Rules.* The rules under consideration in this proceeding do not overlap, duplicate, or conflict with any other rules.

f. *Description and Estimate of the Number of Small Entities to Which the Rules Would Apply.* Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA''). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.

Small TV Broadcast Stations. The SBA defines small television broadcasting stations as television broadcasting stations with $10.5 million or less in annual receipts. BIA Research Inc. reports that 784 out of 1221 commercial television stations (64%) have annual revenues of less than $10.5 million.

The requirement to prepare quarterly Children's Television Programming Reports applies to commercial broadcast television stations. Thus, we estimate that 784 or fewer commercial TV broadcast stations are small businesses, as defined by the SBA.

g. *Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives:* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603(c).

11. This *FNPRM* invites comment generally on the tentative conclusion to require commercial television broadcasters that maintain a website to post their quarterly Children's Television Programming Reports on that site at the same time that they place the reports in the station's public inspection

file. We also seek comment on whether broadcasters should be required to maintain the reports on the website until final action has been taken on the station's next renewal license. We seek comment on whether there is a significant economic impact on any class of small licensees as a result of any of these proposals. Any significant alternatives presented in the comments will be considered.

Ordering Clauses

12. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *FNPRM,* including the Initial and Final Regulatory Flexibility Act Analyses, to the Chief Counsel for the Small Business Administration.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rules

Part 73 of title 47 of the U.S. Code of Federal Regulations is proposed to be amended to read as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

2. Section 73.3526 is amended by revising paragraph (e)(11)(iii) to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

* * * * *

(e) * * *

(11) * * *

(iii) *Children's television programming reports.* For commercial TV broadcast stations, on a quarterly basis, a completed Children's Television Programming Report (''Report''), on FCC Form 398, reflecting efforts made by the licensee during the preceding quarter, and efforts planned for the next quarter, to serve the educational and informational needs of children. The Report for each quarter is to be placed in the public inspection file by the tenth day of the succeeding calendar quarter. By this date, a copy of the Report for each quarter is also to be filed electronically with the FCC. The Report shall identify the licensee's educational and informational programming efforts, including programs aired by the station that are specifically designed to serve the educational and informational needs of children, and it shall explain how programs identified as Core Programming meet the definition set forth in § 73.671(c). The Report shall include the name of the individual at the station responsible for collecting comments on the station's compliance with the Children's Television Act, and it shall be separated from other materials in the public inspection file. The Report shall also identify the program guide publishers to which information regarding the licensee's educational and informational programming was provided as required in § 73.673(b), as well as the station's license renewal date. These Reports shall be retained in the public inspection file until final action has been taken on the station's next license renewal application. Licensees shall publicize in an appropriate manner the existence and location of these Reports.

* * * * *

[FR Doc. 00–28611 Filed 11–8–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG15

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period and Notice of Availability of Draft Economic Analysis for Proposed Critical Habitat Determination for the Arroyo Southwestern Toad

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and notice of availability of draft economic analysis.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability of a draft economic analysis for the proposed designation of critical habitat for the arroyo southwestern toad (*Bufo microscaphus californicus*). We are also providing notice of the reopening of the comment period for the proposal to designate critical habitat for the arroyo southwestern toad to allow all interested parties to submit written comments on the proposal and on the draft economic analysis. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as a part of this reopened comment period and will be fully considered in the final rule.

DATES: The original comment period on the critical habitat proposal closed on August 7, 2000. The comment period is again reopened and we will accept comments until December 11, 2000. Comments must be received by 5:00 p.m. on the closing date. Any comments that are received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: Copies of the draft economic analysis are available on the Internet at ''www.r1.fws.gov'' or by writing to the Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2394 Portola Road, Suite B, Ventura, California 93003. All written comments should be sent to the Field Supervisor at the above address. You may also send comments by electronic mail (e-mail) to ''fw1artoch@r1.fws.gov.'' Please submit electronic comments in ASCII file format and avoid the use of special characters and encryption. Please include ''Attn: RIN 1018–AG15'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Ventura Fish and Wildlife Office at phone number 805–644–1766. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above Service address.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Ventura Fish and Wildlife Office, at the above address (telephone 805–644–1766; facsimile 805–644–3958).

SUPPLEMENTARY INFORMATION:

Background

The arroyo southwestern toad (*Bufo microscaphus californicus*) is one of three members of the southwestern toad (*B. microscaphus*) complex, in the family of true toads, Bufonidae. The arroyo toad is a small (adult length 55–82 millimeters (2–3 inches), dark-spotted toad, with females larger than males. The arroyo toad is found in coastal and desert drainages from Monterey County, California, south into northwestern Baja California, Mexico. These systems are inherently quite dynamic, with marked seasonal and annual fluctuations in climatic regimes, particularly rainfall. Natural climatic variations as well as other random events, such as fires and floods, coupled with the species' specialized habitat requirements, lead to annual fluctuations in arroyo toad populations. Extensive habitat loss as a result of agriculture and urbanization, and the construction, operation, and maintenance of water storage reservoirs,

flood control structures, roads, and recreational facilities such as campgrounds and off-highway vehicle parks, have caused many arroyo toad populations to be reduced in size or extirpated (eliminated). Threats to the species survival include loss of habitat, coupled with habitat modifications due to the manipulation of water levels in many central and southern California streams and rivers, as well as predation from introduced aquatic species, and habitat degradation from introduced plant species. Such threats have caused arroyo toads to be extirpated from about 75 percent of the previously occupied habitat in California. Pursuant to the Endangered Species Act of 1973, as amended (Act), the species was federally listed as endangered on December 16, 1994, due to habitat degradation, small population sizes, and predation (59 FR 64859). On June 8, 2000, we published in the **Federal Register** (65 FR 36512) a determination proposing critical habitat for the arroyo southwestern toad. Approximately 193,600 hectares (478,400 acres) fall within the boundaries of the proposed critical habitat designation. Proposed critical habitat is located in Los Angeles, Monterey, Orange, Riverside, Santa Barbara, San Bernardino, and San Diego, San Luis Obispo, and Ventura counties, California, as described in the proposed determination.

Section 4(b)(2) of the Act requires that the Secretary shall designate or revise critical habitat based upon the best scientific and commercial data available and after taking into consideration the economic impact of specifying any particular area as critical habitat. Based upon the previously published proposal to designate critical habitat for the arroyo southwestern toad and comments received during the previous comment period, we have prepared a draft economic analysis of the proposed critical habitat designation. The draft economic analysis is available at the above Internet and mailing address. We have reopened the comment period at this time in order to accept the best and most current scientific and commercial data available regarding the proposed critical habitat and the draft economic analysis. We will accept written comments during this reopened comment period. Previously submitted oral or written comments on this critical habitat proposal need not be resubmitted. The current comment period on this proposal closes on December 11, 2000. Written comments may be submitted to the Ventura Fish and Wildlife Office in the **ADDRESSES** section.

Author

The primary author of this notice is John Nuss, U.S. Fish and Wildlife Service, Regional Office, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: November 2, 2000.

Donald W. Steffeck,

Acting Manager, California/Nevada Operations Office.

[FR Doc. 00–28699 Filed 11–8–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH70

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for *Polygonum hickmanii* (Scotts Valley polygonum)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose endangered status pursuant to the Endangered Species Act (Act) of 1973, as amended, for *Polygonum hickmanii* (Scotts Valley polygonum). *Polygonum hickmanii* is restricted to two sites in northern Scotts Valley, Santa Cruz County, California. The plant is threatened by alteration of habitat due to urban development and associated disturbances, displacement by nonnative grasses, and the increased chance of extinction due to the small numbers of individuals and limited amount of habitat occupied by this species. The effects of these threats are exacerbated by the inadequate design of preserves meant to protect the species. This proposed rule, if made final, would extend the Act's protection to this plant.

DATES: All comments, including written and email from all interested parties must be received by January 8, 2001. Public hearing requests must be received by December 26, 2000.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments to the Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003.

2. You may send comments by e-mail to svpolygonum@r1.fws.gov. See the Public Comments Solicited section below for file format and other information about electronic filing.

3. You may hand-deliver comments to our Ventura Fish and Wildlife office at 2493 Portola Road, Suite B, Ventura, California.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Carl Benz, Assistant Field Supervisor, Listing and Recovery, Ventura Fish and Wildlife Office at the above address or telephone number 805/644–1766 or facsimile 805/644–3958.

SUPPLEMENTARY INFORMATION:

Background

Polygonum hickmanii (Scotts Valley polygonum) is a recently described endemic species from Scotts Valley, Santa Cruz County, California (Hinds and Morgan 1995). The species was named after James C. Hickman, editor of the Jepson Manual (1993) and author of the chapter on the genus *Polygonum* in the same reference. He concurred with Morgan's assessment that the taxon was distinct (J.C. Hickman, *in litt.* 1991), but died before coauthoring the publication of a name. Randy Morgan made the type collection in 1993 from a ''grassland N of Navarra Drive, W of Carbonero Creek'' (Hinds and Morgan 1995). The plant is a small, erect, taprooted annual in the buckwheat family (Polygonaceae). It grows from 2 to 5 centimeters (cm) (1 to 2 inches (in.)) tall, and can be either single stemmed or profusely branching near the base in more mature plants. The linear-shaped leaves are 0.5 to 3.5 cm (0.2 to 1.4 in.) long and 1 to 1.5 cm (0.4 to 0.6 in.) wide and tipped with a sharp point. The single white flowers consist of two outer tepals (petal-like structure) and three inner tepals and are found in the axils of the bracteal leaves (modified leaves near the flower). The plant flowers from late May to August. Seed production ranges from a few dozen seeds in a typical individual to as many as two hundred in a particularly robust individual (Randy Morgan, biological consultant, pers. comm. 1998). The nearest known location of a closely related species, *P. parryi,* is at Mount Hamilton, about 48 kilometers (km) (30 miles (mi)) inland. *Polygonum hickmanii* differs from *P. parryi* in its larger white flowers, longer leaves, larger anthers and achenes, and longer, straight stem sheath (Hinds and Morgan

1995). According to Harold Hinds, author for the genus *Polygonum* in an upcoming volume of the Flora of North America (Flora of North America Editorial Committee, in prep.), the distinctness of *P. hickmanii* as a species will continue to be recognized in that volume (Harold Hinds, University of New Brunswick, pers. comm. 1998).

The available information suggests that *Polygonum hickmanii* has always been limited in distribution to the northern Scotts Valley area in Santa Cruz County, California. Two bodies of evidence support this theory. First, none of the herbarium collections of other *Polygonum* species that were checked in preparation of the publication of the name for *P. hickmanii* matched those collected from Scotts Valley. Herbaria that were searched included the Dudley Herbarium at Stanford University, the Jepson and University of California (UC) herbaria located at UC Berkeley, and the herbarium at the Missouri Botanic Garden (H. Hinds, *in litt.* 1998; R. Morgan, pers. comm. 1998). Secondly, predictive searches of other potentially suitable habitat in Santa Cruz County (based on soil type, local climate, and associated species) have failed to locate any additional colonies of *P. hickmanii* (R. Morgan, pers. comm. 1998).

Polygonum hickmanii is known from two sites about 0.6 km (1 mi) apart at the northern end of Scotts Valley. The plant is found on gently sloping to nearly level fine-textured shallow soils over outcrops of Santa Cruz mudstone and Purisima sandstone (Hinds and Morgan 1995). It occurs with the endangered *Chorizanthe robusta* var. *hartwegii* (Scotts Valley spineflower) (59 FR 5499) and other small annual herbs in patches within a more extensive annual grassland habitat. These small patches have been referred to as ''wildflower fields'' because they support a large number of native herbs, in contrast to the adjacent annual grasslands that support a greater number of nonnative grasses and herbs. While the wildflower fields are underlain by shallow, well-draining soils, the surrounding annual grasslands are underlain by deeper soils with a greater water-holding capacity, and therefore more easily support the growth of nonnative grasses and herbs. The surface soil texture in the wildflower fields tends to be consolidated and crusty rather than loose and sandy (Biotic Resources Group (BRG) 1998). Elevation of the sites is from 215 to 246 meters (m) (700 to 800 feet (ft)) (Hinds and Morgan 1995). The climate in the city of Santa Cruz, 13 km (8 mi) to the south, is characterized by an average of 77 cm (30 in.) of rain per year, and an average temperature of 14 degrees Celsius (57 degrees Fahrenheit), while the city of Los Gatos, 16 km (10 mi) to the north, averages 120 cm (51 in.) of rain per year, with an average temperature of 15 degrees Celsius (58 degrees Fahrenheit) (Worldclimate 1998).

Polygonum hickmanii is associated with a number of native herbs including *Chorizanthe robusta* var. *hartwegii, Lasthenia californica* (goldfields), *Minuartia douglasii* (sandwort), *Minuartia californica* (California sandwort), *Gilia clivorum* (gilia), *Castilleja densiflora* (owl's clover), *Lupinus nanus* (sky lupine), *Brodiaea terrestris* (brodiaea), *Stylocline amphibola* (Mount Diablo cottonweed), *Trifolium grayii* (Gray's clover), and *Hemizonia corymbosa* (coast tarplant). Nonnative species present include *Filago gallica* (filago) and *Vulpia myuros* (rattail) (California Natural Diversity Data Base (CNDDB) 1998; R. Morgan, pers. comm. 1998). In many cases, the habitat also supports a crust of mosses and lichens (BRG 1998).

Morgan observed a sphecid wasp (family Sphecidae) visitation to an individual *Polygonum hickmanii* (R. Morgan, pers. comm. 1998). Other potential pollinators have not been identified at this time, and the degree to which *P. hickmanii* depends on insect pollinators (rather than being self-pollinated) has not been determined.

For purposes of this rule, a cluster of individuals of *Polygonum hickmanii* will be referred to as a ''colony.'' Because of the close proximity of many of the clusters to each other (less than 0.4 km (0.2 mi) apart), it is uncertain whether these clusters are patches within a metapopulation (population consisting of interconnected subpopulations), true colonies, or separate populations. The approximate area occupied by any one colony ranges from the smallest at 1.5 m by 1.5 m (5 ft by 5 ft) to the largest at 15 m by 9 m (50 ft by 30 ft). There are approximately 11 colonies of *P. hickmanii* in total, which together occupy less than 0.4 hectare (ha) (1 acre (ac)).

The *Polygonum hickmanii* colonies are split between two sites. The first site is located north of Casa Way and west of Glenwood Drive in northern Scotts Valley. Referred to as the Glenwood site, it contains five colonies on two parcels of land. One of these colonies is situated within a 3.6 ha (9 ac) preserve on a 19.4 ha (48 ac) parcel that is owned by the Scotts Valley Unified School District and is referred to as the ''School District'' colony (Denise Duffy and Associates 1998). The other four colonies at the Glenwood site are located approximately 0.21 km (0.13 mi) to the west of the School District colony, on a parcel of land owned by the Salvation Army (CNDDB 1998). These four colonies are referred to as the ''Salvation Army'' colonies.

The second site contains six colonies and is referred to as the ''Polo Ranch'' site. Located just east of Highway 17 and north of Navarra Road in northern Scotts Valley, the Polo Ranch site is approximately 1.6 km (1 mi) east of the Salvation Army and School District colonies. These six colonies are situated within 0.2 km (0.1 mi) of one another, and all of these colonies occur on a parcel owned by Greystone Homes (Kathleen Lyons, BRG, *in litt.* 1997).

Being a short-lived annual species, the total number of individuals can vary from year to year. In 1998, the total number of individuals found at the Glenwood site was 153 on the School District parcel and approximately 2,000 on the Salvation Army parcel (K. Lyons, pers. comm. 1998). In 1997, the total number of individuals on the Polo Ranch site was approximately 2,140 (K. Lyons *in litt.* 1997).

Polygonum hickmanii is threatened with extinction by habitat alteration due to secondary impacts of urban development occurring within close proximity. Urban development includes the proposed construction and operation of a high school; installation and maintenance of water delivery pipelines, access roads, and water tanks; and currently existing and proposed housing. Results of a field survey conducted on the School District colony identified that the *P. hickmanii* may occur in the vicinity of the alternative access routes to the tank sites and that potential impacts from the construction activities may be significant (Service, *in litt.* 1998).

The kinds of habitat alterations expected to impact *Polygonum hickmanii* as a result of development include changes in hydrologic conditions; soil compaction; increased disturbance by humans, pets, and bicycle traffic; the inadvertent application of herbicides and pesticides; dumping of yard wastes; and the introduction of nonnative species. These habitat alterations are substantial enough that they are even destabilizing the proposed preserves and open space areas intended to protect *P. hickmanii* and making these areas inadequate for maintaining viable populations of this species (Service, *in litt.* 1998). Studies on habitat fragmentation and preserves established in urbanized settings have shown that these preserves gradually become destabilized from external forces (*i.e.,* changes in the hydrologic

conditions, soil compaction, etc.), resulting in preserves that are no longer able to support the species they were established to protect (Kelly and Rotenberry 1993).

The chance of random extinction for *Polygonum hickmanii* is also increased due to the small numbers of individuals and limited area occupied by the species (Shaffer 1981).

Previous Federal Action

We first became aware of *Polygonum hickmanii* in the course of proposing to list *Chorizanthe robusta* var. *hartwegii* for Federal listing in 1992. At that time, however, a name for the taxon had not formally been published, and so it could not be considered for listing under the Act. Once the name, *P. hickmanii,* was published by Hinds and Morgan (1995), we reviewed information in our existing files, in the California Natural Diversity Data Base, and new information on proposed projects being submitted to us for our review, and determined that sufficient information existed to believe that listing might be warranted. *Polygonum hickmanii* was included in the list of candidate species published in the **Federal Register** on October 25, 1999 (64 FR 57534).

The processing of this proposed rule conforms with our current Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarified the order in which we process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being. Second priority is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists (such as this proposed rule for *Polygonum hickmanii*). The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Polygonum hickmanii* H. R. Hinds and R. Morgan are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* In addition to the colonies of *Polygonum hickmanii* at the Glenwood and Polo Ranch sites, other colonies of *P. hickmanii* may have occurred in Scotts Valley prior to publication of the species name in 1995. An existing housing development bordering the south side of the Glenwood site (Glen View) was built in the mid-1980s, and one development bordering the south side of the Polo Ranch site (Navarra Drive) was built in the 1970s. The environmental analyses done at those times would not have recognized *P. hickmanii* as a distinct taxon.

None of the occupied habitat for *Polygonum hickmanii* is targeted for direct destruction; however, all occupied habitat will be subject to habitat alteration resulting from current and proposed projects. At the Glenwood site, construction of a high school was initiated in June 1998. The colony of *P. hickmanii* on this site is within an area designated as a grassland preserve intended to protect a number of sensitive plant species, including *P. hickmanii, Minuartia californica* (California sandwort), *Plagiobothrys diffusus* (San Francisco popcorn flower), and the endangered *Chorizanthe robusta* var. *hartwegii.* The preserve is 2 ha (4 ac) in size, and is adjacent to a wetland preserve of slightly smaller size. The two preserves combined form a 3.6 ha (9 ac) area, linear in shape, sandwiched between high school playing fields to the north and the existing Glen View development to the south. The colony of *P. hickmanii* is 18 m (60 ft) away from the edge of the preserve nearest to the playing field. A management plan for the grasslands preserve includes prescriptions for boundary protection, habitat enhancement, control of nonnative plant species, and a 10-year monitoring program (BRG 1998). Although the effectiveness of this management plan has not been demonstrated yet, *P. hickmanii* will likely still be subject to habitat alteration due to the small size of the preserve and its proximity to other land uses. Problems with managing small preserves within urban areas have been documented previously (Jensen 1987; Clark *et al.* 1998; Howald 1993; Service 1995). See Factor E for additional discussion on the failure of preserve design to provide for long-term conservation.

The kinds of habitat alteration that are anticipated to result from the high school project include changes in surface hydrologic conditions due to the increased watering of the ballfield up slope from the preserve; changes in surface water quality due to the application of fertilizers, herbicides and pesticides on the ballfield and adjacent areas up slope from the preserve; an increase in the number of nonnative plant species that will likely invade from adjacent newly altered areas; and an increase in the amount of soil disturbance and soil compaction caused by the increased numbers of students, pets, and bicycles coming into the preserve from adjacent areas. The nature of the thin soils and the crusts of mosses and lichens they support make them particularly vulnerable to any form of surface disturbance (Belknap 1990).

The Scotts Valley Water District recently approved the construction of a series of pipelines, maintenance roads, and tanks to distribute recycled water in the northern Scotts Valley area (EMC Planning Group 1998; Scotts Valley Water District 1998). One pipeline and an all-weather maintenance road pass through the southwestern corner of the preserve, then continue to the north and west onto a parcel owned by the Salvation Army where a water tank would be installed. As originally proposed, this route was to come within 23 m (75 ft) of the colonies of *Polygonum hickmanii* on the Salvation Army parcel, and within 18 m (60 ft) of the endangered *Chorizanthe robusta* var. *hartwegii* (K. Lyons, pers. comm. 1998). However, when road grading was initiated in July 1999, grading plans were not followed closely. Moreover, measures to minimize and mitigate impacts to sensitive resources included in the approved project were not implemented. As a result, road grading came to within 3 m (10 ft) of *P. hickmanii,* and to within 6 m (20 ft) of *C. r.* var. *hartwegii* (Vince Cheap, California Native Plant Society, *in litt.* 1999).

The kinds of habitat alteration that are anticipated to impact *P. hickmanii* from the Water District's project include changes in surface hydrology due to the placement of the road upslope from the colonies; changes in surface water quality due to the application of herbicides, pesticides, and tackifiers (dust reducing substances) on the road and roadsides upslope from the colonies; an increase in the amount of soil siltation from the up slope roadbank; soil compaction and disturbance; and an increase in the number of nonnative plant species that will likely invade from the road.

A recent visit to the Glenwood site confirmed that the nonnative plant *Cytisus scoparius* (Scotch broom) has invaded to within a few feet of one of the colonies of *Polygonum hickmanii* in the last few years (Carole Kelley,

Friends of Scotts Valley, per. comm. 1998). If not controlled, this invasive plant could quickly eliminate habitat for the *P. hickmanii*. The California Department of Food and Agriculture has declared *Cytisus scoparius* and *Cytisus monspessulanus* (French broom) pest species, which in some places forms impenetrable thickets that displace native vegetation and lower habitat value for wildlife (Habitat Restoration Group, no date).

A housing development proposed for the Polo Ranch site includes 74 housing units clustered on 7.3 of 47.0 ha (18 of 116 ac), with the remaining 38 ha (95 acres) kept as open space (City of Scotts Valley 1998). The development, as currently proposed, places houses and roadways within 18 m (60 ft) or closer to five out of six colonies of *Polygonum hickmanii*. Moreover, not only will the development then separate the colonies from each other, three of the six colonies will be isolated on all sides either by existing or proposed dwellings and roadways.

Alterations of habitat for *Polygonum hickmanii* that are likely to occur as a result of the Polo Ranch development are changes in surface hydrologic conditions due to the grading of roads and lots; soil compaction and disturbance by humans, pets, and bicycle traffic; inadvertent (i.e., aerial drift) and intentional application of herbicides, pesticides, and fertilizers on roadsides and yards; inadvertent introduction of nonnative species (both weedy and ornamental), and dumping of yard wastes. Examples of alteration of habitat that have occurred on grasslands north of the backyards of existing housing along Navarra Drive (along the south edge of the Polo Ranch property) include gates and pathways leading from backyards onto the grassland, ivy creeping over fences and onto the grassland, oaks (*Quercus* sp.) planted within the grassland, and shade created by planted backyard trees (K. Lyons, pers. comm. 1998).

Although two of the projects (high school and recycled water distribution system) include plans for conservation of *Polygonum hickmanii* through development-related mitigation, and the third project (Polo Ranch) would be expected to do so as well, the successful implementation of these mitigation plans has not been demonstrated. In particular, the size and characteristics of preserve areas, open spaces, and management actions prescribed through the environmental review process (see Factor D) are unlikely to be biologically adequate to meet the goal of long-term conservation of *P. hickmanii* and its habitat. In addition, since *P. hickmanii* colonies will be in preserves or open spaces that are small in area, support small numbers of individuals, whose habitat is degraded, or that continue to receive secondary effects of adjacent human activities, they become more vulnerable to extirpation from naturally occurring events (see Factor E).

All habitat for *Polygonum hickmanii* is also threatened in general by the encroachment of nonnative grasses from the surrounding grasslands. Although several species of nonnative grass (e.g., *Vulpia myuros*) grow within the wildflower fields, these patches for the most part do not support the abundant growth of nonnative grasses (*Bromus* sp.) that occur on the adjacent, more mesic grassland habitat. These nonnative grasses on the mesic grasslands do not compete with *P. hickmanii* in the classic sense (competition for light, water, nutrients). However, the tall culms (stems) of nonnative grasses can physically drape over patches of wildflower field habitat, particularly the smaller patches, and deposit a mat of litter (thatch) that physically prohibits the species within the wildflower field from appearing. Because nonnative grasses and herbs produce more biomass than their native counterparts, they also produce more litter. Although decomposition rates for nonnative species are likely no slower than those of native species, their faster rate of biomass production results in a greater accumulation of litter. Other cases of native species being overtaken by litter accumulation produced by nonnatives have been noted in desert ecosystems (Jayne Belknap, Biological Resources Division, pers. comm. 1998) and on the California Channel Islands (Rob Klinger, The Nature Conservancy, pers. comm. 1998).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Overutilization or vandalism are not known to be threats to this species.

C. *Disease or predation.* We found no evidence that disease is a factor affecting this species. Predation by cattle, livestock, or other wildlife species is not known to occur.

D. *The inadequacy of existing regulatory mechanisms. Polygonum hickmanii* currently receives no protection under Federal law, and it is not currently listed by the State of California.

Chorizanthe robusta var. *hartwegiana,* an endangered species, occurs within the same wildflower field habitat as *Polygonum hickmanii.* Although *C. r.* var. *hartwegiana* is listed, it remains vulnerable to all the same threats that face *P. hickmanii*. Therefore, the association of *P. hickmanii* with the *C. r.* var. *hartwegiana* in the same wildlflower field habitat confers little regulatory protection on the *P. hickmanii*. However, there may be some benefit to *P. hickmanii* through the California Environmental Quality Act (CEQA) process described below.

The CEQA requires a full disclosure of the potential environmental impacts of proposed projects. The lead agency is the public agency with primary authority or jurisdiction over the project, and is responsible for conducting a review of the project and consulting with other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines requires a finding of significance if a project potentially ''reduce(s) the number or restrict(s) the range of a rare or endangered plant or animal.'' Species eligible for State listing as threatened or endangered, but not listed, are given the same protection as those species officially listed by State or Federal governments. The Rare Plant Scientific Advisory Committee for the California Native Plant Society has determined that *Polygonum hickmanii* meets the criteria for being included on CNPS' ''List 1B.'' The plants on List 1B meet the definitions of sec. 1901, chapter 10 of the California Department of Fish and Game Code, and are therefore eligible for State listing. It is mandatory that plants on List 1B be fully considered during preparation of environmental documents relating to CEQA. Once significant effects are identified, the lead agency may require mitigation for effects through changes in the project or alternatively, the lead agency may decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of listed species. Therefore, the protection of listed species through CEQA depends upon the discretion of the lead agency involved.

CEQA approval for the construction of the Polo Ranch development falls under the purview of the City of Scotts Valley. However, the Scotts Valley Unified School District was the lead CEQA agency for approval of the Glenwood High School project, while the Scotts Valley Water District acted as the lead CEQA agency for approval of the recycled water distribution project. With at least three local agencies separately approving development proposals, a consistent, appropriate approach to managing such small preserves and adequately mitigating project impacts may be very difficult to develop and maintain.

Inclusion of mitigation measures in a project approved through the CEQA process does not guarantee that such measures are implemented. The recycled water distribution project approved by the Scotts Valley Water District included measures to avoid and mitigate impacts to sensitive resources, including those for *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii.* However, grading for this project was initiated without implementing those measures, which resulted in a much narrower buffer zone left between the plant populations and the grading activity (Carl Wilcox, California Department of Fish and Game, *in litt.* 1999).

Certain local agencies are exempt from city and county regulations in accordance with chapter 1, paragraphs 53094 and 53096 of the State of California regulations on planning, zoning, and development laws (Governor's Office of Planning and Research 1996). In the case of the High School project, the Scotts Valley Unified School District is exempt from local permitting requirements; therefore, no permits or approvals were required from the City of Scotts Valley. In the case of the recycled water distribution project, the Scotts Valley Water District is similarly exempted; therefore, no permits or approvals are required from either the City of Scotts Valley or the County of Santa Cruz. In July 1999, the Water District proceeded with road and tank pad grading for this project. This activity was initiated without fulfilling mitigation measures that called for sensitive areas to be flagged and fenced ahead of time, and resulted in grading that went beyond the scope of work for the project. Although the County of Santa Cruz notified the Water District that the additional grading was not exempted from applicable regulations, the only consequence is that the county has requested that the damaged areas are satisfactorily restored (Alvin James, County of Santa Cruz, *in litt.* 1999).

The establishment and implementation of a management plan for the preserve at the High School site does not provide for enforcement authority to maintain the physical integrity of the preserve. Few regulatory mechanisms are available to assist in protection of the high school preserve. State law addressing trespass is found at California Penal Code Section 554 and 555 (California State Legislature 2000). To date, however, these regulations have not been enforced in cases of trespass at the preserve (Carole Kelley, Friends of Scotts Valley, pers. comm. 1999).

E. *Other natural or manmade factors affecting its continued existence.* The design of preserves and open spaces related to project mitigation is insufficient to provide for the long-term conservation of *Polygonum hickmanii* and other sensitive species that occur in the wildflower fields in Scotts Valley. Additionally, the threat of random extinction is increased in small populations of limited distribution.

Inadequate preserve design. The need for adequate preserve design has been discussed by many biologists (Jensen 1987; Shafer 1995; Rathcke and Jules 1993; Kelly and Rotenberry 1993). To increase the certainty that a species will persist over a given interval of time, adequate habitat needs to be protected and land uses adjacent to the preserve need to be compatible with maintaining the integrity of the preserve. Habitat is not restricted solely to the area actually occupied by the species. It must include an area that is large enough to maintain the ecological functions upon which the species depends, and have a ratio of edge to total area that minimizes fragmentation and edge effects.

Failure to protect sufficient habitat results in the eventual decline of the target species. Small preserves adjacent to urban areas have additional stress placed on them due to the need to manage a host of human-caused impacts. The increased stress urban wildland areas receive has been documented by many authors (Keeley 1983). Although little work has focused on the effects of habitat alteration and fragmentation on native grassland habitat in California, the effects would likely be similar to those documented for other native California habitats. Clark *et al.* (1998) discussed management problems encountered by small vernal pool preserves surrounded by an urban park and residential development in the Sacramento area, and they identified the following threats to the habitat—off-road motorized vehicle, foot, horse, and bicycle traffic; plant and animal collection; herbicides; changes in hydrology; garbage; invasive exotic plants; feral and domestic animals; vegetation management for fire control; and vandalism.

We previously listed serpentine-endemic species in the San Francisco Bay area, in part, due to the impacts these taxa were subjected to in urban wildland areas (Service 1995; 60 FR 6671). For example, *Cordylanthus tenuis* ssp. *capillaris* (Pennell's bird's-beak) is threatened with mowing and spraying along roadsides, illegal dumping of household trash, and disturbance that facilitates the invasion of nonnative species (60 FR 6671). *Calochortus tiburonensis* (Tiburon mariposa lily) is threatened by bicycle, motorbike, and pedestrian traffic even though it occurs within a fenced preserve area; and *Cirsium fontinale* var. *fontinale* (Fountain thistle) is threatened by dumping of garden debris from households on a ridge above the plants (60 FR 6671). In the case of *Polygonum hickmanii* at the School District Preserve, the site has remained unfenced and unsigned, and has been subject to bicycle traffic, heavy equipment traffic, and served as a repository for yard waste (C. Kelley, *in litt.* 1999). In addition, a management plan for the preserve has not yet been completed.

Pentachaeta lyonii (Lyon's pentachaeta) is an endangered plant species that is restricted to less than 10 sites in western Los Angeles and eastern Ventura County. It is similar to *Polygonum hickmanii* in that its habitat consists of thin-soiled patches within a larger grassland community that has deeper soils. In the early 1990s, small patches of *Pentachaeta lyonii* were set aside as preserves as mitigation for a housing development and golf course in Westlake Village. At hole 10 on the golf course, a 1,394 square-meter (1,500 square-foot) area was set aside for a small population of the pentachaeta; however, the population dwindled over the next six years and finally disappeared (Carl Wishner, Envicom, pers. comm. 1998). Attempts to transplant bare root seedlings into the site resulted in the reappearance of the species the following year, but with numbers again dwindling in subsequent years. Habitat for the plant has been rendered unsuitable for several reasons including overspray from the sprinkler system that increased soil moisture, which in turn promoted the growth of weedy nonnative herbs and grasses that compete with the pentachaeta. Overspray also resulted in the mildew of pentachaeta flower heads, which then did not produce seed. Adjacent landscaped areas provide cover that harbors populations of rabbits, birds, snails and insects that were not previously present. In combination, these animals have consumed much of the vegetation along a 1.5 to 2.4 m (5 to 8 ft) wide swath of vegetation, including pentachaeta, on the perimeter of the preserve area.

Alberts *et al.* (1993) documented the effects of habitat fragmentation on coastal scrub in southern California. Surveys of native and introduced plant species conducted in 25 patches of coastal scrub found that plant species richness and the ratio of native species to nonnative species was correlated

with several variables—larger and more recently isolated patches supported more species; fragments with longer perimeters contained more weed species; and older fragments and those with artificially supplemented water sources supported higher numbers of escaped ornamentals. Human disturbance, including clearing of vegetation, addition of nonnatural water supplies, and disruption of fire regimes, has most likely contributed to the loss of native species and subsequent invasion of nonnative species into the patches.

Habitat fragmentation also affects plant-pollinator interactions in a number of ways. The abundance of specific pollinators may decline due to the elimination of nesting sites, decreases in food source plants due to changes in composition of the plant community, increases in competition from nonnative pollinators, and increases in the exposure to pesticides (Rathcke and Jules 1993; Jennersten 1988; Kearns and Inouye 1997). In plant species that are obligate outcrossers (those that require pollinators to effect seed development), reduced pollinator availability can result in limited seed production. Even if a plant species is not an obligate outcrosser, genetic variability within the plant population can be reduced with potentially deleterious long-term consequences (see discussion below on random extinction).

In the case of *Polygonum hickmanii,* ecological processes that would be important to maintain within preserve areas include, but are not limited to, the integrity of edaphic (soil) conditions, hydrologic processes (surface flows), the associated ''wildflower field'' plant community, plant-pollinator interactions, and seed dispersal mechanisms. Maintaining such processes will be severely compromised by the small size of the areas being set aside as preserves or open spaces, the extent of edge subject to external influences, and the particular kinds of adjacent land use to which the preserves will be subject. Threats resulting from alteration of habitat due to adjacent changes in land use (discussed in Factor A) are exacerbated by the small size of the preserves and the proximity of nearly all of the colonies to the edges of the preserves or open spaces, or to roads. Distances of less than 24 m (80 ft) are not considered to be highly effective at buffering from chemical pollutants (e.g., herbicides, pesticides, and other contaminants) (Conservation Biology Institute 2000). Depending on site configuration or circumstances, buffers of up to 91 m (300 ft) may not be adequate to provide sufficient buffering from invasive animals and increased fire frequency (Conservation Biology Institute 2000) .

Random extinction. Species with few populations and individuals are vulnerable to the threat of naturally occurring events, causing extinction through mechanisms operating either at the genetic level, the population level, or at the landscape level. The loss of genetic diversity may decrease a species' ability to persist within the environment, often manifested as a decrease in reproductive success. At the population level, species with few populations or individuals may be subject to forces that affect their ability to complete their life cycles successfully. For example, the loss of pollinators may reduce successful seed set, or if the host plant is at least partially self-compatible, may reduce the degree of genetic variability within species. At the landscape level, random natural events, such as storms, drought, or fire could destroy a significant percentage of a species' individuals or entire populations. The restriction of colonies to small sites increases their risk of extinction from such naturally occurring events.

The genetic characteristics of *Polygonum hickmanii* have not been investigated; therefore, the degree to which these characteristics contribute to the likelihood of *P. hickmanii* being vulnerable to extinction for these reasons is unknown. However, random events operating at the population and landscape levels clearly have the potential for increasing the chance of extinction for *P. hickmanii.*

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this taxon in determining to propose this rule. Based on this evaluation, the appropriate action is to propose listing *Polygonum hickmanii* (Scotts Valley polygonum) as endangered. The species is threatened with extinction due to habitat alteration resulting primarily from urban development, inadequate preserve design, and vulnerability to naturally occurring events due to low numbers of individuals and occupied acreage of the entire taxon. All of the colonies are on private lands. Although conservation efforts have been prescribed as part of mitigation for two of the three projects (high school and recycled water distribution project), and are expected to be proposed for the third project (Polo Ranch development), the small extent of occupied habitat, small colony sizes, and imminent threats lessen the chance that such efforts will lead to secure, self-sustaining colonies at these sites.

Critical Habitat

Critical habitat is defined in section 3 of the Act as the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species, and that may require special management consideration or protection, and specific areas outside the geographic area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered species or a threatened species to the point at which listing under Act is no longer necessary.

Critical habitat designation, by definition, directly affects only Federal agency actions through consultation under section 7(a)(2) of the Act. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Our Final Listing Priority Guidance for FY 2000 (64 FR 57114) states that the processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under the Listing Priority Guidance. Critical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately, in which case stand-alone critical habitat determinations will be published as notices in the **Federal Register**.

We believe that critical habitat is prudent for *Polygonum hickmanii.* In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (*e.g., Natural Resources Defense Council* v. *U.S. Department of the Interior,* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt,* 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we believe that designation of critical habitat would be prudent for *P. hickmanii.*

Due to the small number of populations, *Polygonum hickmanii* is vulnerable to unrestricted collection, vandalism, or other disturbance. We are concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, at this time we do not have specific evidence of vandalism, collection, or trade of *P. hickmanii* or any similarly situated species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this species of taking or other human activity.

In the absence of a finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. In the case of this species, there may be some benefits to designation of critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. There may also be some educational or informational benefits to designating critical habitat. Therefore, we propose that critical habitat is prudent for *Polygonum hickmanii.*

We are deferring the proposed critical habitat designation for *Polygonum hickmanii* until a later date. The reason for this is that *P. hickmanii* occurs in the same general areas as *Chorizanthe robusta* var. *hartwegii.* We intend to concurrently propose critical habitat for both of these species. Also, this deferral will allow us to concentrate our limited resources on higher priority critical habitat and other listing actions, while allowing us to put in place protections needed for the conservation of *P. hickmanii* without further delay. We will also make the final critical habitat determination separately from the final listing determination for *P. hickmanii.*

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in public awareness and conservation actions by Federal, State, and local and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States, and requires that we carry out recovery actions for all listed species. Together with our partners, we would initiate such actions following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this Interagency Cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat, if any has been designated. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Activities on private lands requiring a permit from a Federal agency, such as a permit from the Army Corps of Engineers under section 404 of the Clean Water Act, would be subject to the section 7 consultation process. Federal actions not affecting the species, as well as actions on non-Federal lands that are not federally funded or permitted would not require section 7 consultation.

Listing of this plant would authorize development of a recovery plan for it. However, in the case of *Polygonum hickmanii,* we included conservation recommendations for this species in a multi-species recovery plan we published, which also addressed recovery actions for two listed insects and three listed plants (including the endangered *Chorizanthe robusta* var. *hartwegii* that occurs with *P. hickmanii*) in the Santa Cruz Mountains (Service 1998). Should *P. hickmanii* become listed, we intend that the conservation recommendations included in this recovery plan will, in effect, become the recovery plan for this species. This plan identifies both State and Federal efforts for conservation of the plant and establishes a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan sets recovery priorities and describes site-specific management actions necessary to achieve conservation and survival of the plant. Additionally, pursuant to section 6 of the Act, we would be able to grant funds to the State of California for management actions promoting the protection and recovery of the species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove the species from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction in areas under Federal jurisdiction and the removal, cutting, digging up, damaging, or destroying of such endangered plants in knowing violation of any State law or regulation, or in the course of any violation of a State criminal trespass law. Certain exceptions to the prohibitions apply to our agents and State conservation agencies.

In accordance with our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), at the time a species is listed we identify to the maximum extent practicable those activities that would or would not

constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. Collection, damage, or destruction of endangered plants on Federal lands is prohibited, although in appropriate cases, a Federal endangered species permit may be issued to allow for collection. However, *Polygonum hickmanii* is not presently known to occur on Federal land. Removal, cutting, digging up, damaging or destroying endangered plants on non-Federal lands also constitutes a violation of section 9 of the Act if conducted in knowing violation of State law or regulations, including State criminal trespass law.

Questions regarding whether specific activities will constitute a violation of section 9 should be addressed to the Field Supervisor, Ventura Fish and Wildlife Office (see **ADDRESSES** section).

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Permits Branch, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we request comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Polygonum hickmanii;*

(2) The location of any additional populations of *Polygonum hickmanii* and the reasons why any habitat of this species should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Polygonum hickmanii.*

In making a final decision on this proposal, we will take into consideration the comments and any additional information we receive. Such communications may lead to a final regulation that differs from this proposal.

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will solicit the expert opinions of three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed listing.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final determination may differ from this proposal.

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 us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

If you would like to submit comments by e-mail (see **ADDRESSES** section), please submit e-mail comments as an ASCII file and avoid the use of special characters and any form of encryption. Please also include ''Attn: RIN 1018–AH70'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Ventura Fish and Wildlife Office at phone number 805/644–1766.

Public Hearings

The Act provides for one or more public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor (see **ADDRESSES** section).

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following—(1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make this proposed rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to the office identified in the **ADDRESSES** section at the beginning of this document.

National Environmental Policy Act

We have determined that an Environmental Assessment and Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This proposed rule does not contain any new or revised information collection requirements for which Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is required. An information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned clearance number 1018–0094. For additional information concerning permits and associated requirements for endangered plants, see 50 CFR 17.62

and 17.63. We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Constance Rutherford (see **ADDRESSES** section).

List of Subjects in 50 CFR part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Polygonum hickmanii	Scotts Valley polygonum.	U.S.A. (CA)	Polygonaceae	E		NA	NA
*	*	*	*	*	*		*

Dated: October 17, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–28698 Filed 11–8–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Designation of the Northern Sea Otter in the Aleutian Islands as a Candidate Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of designation of a candidate species.

SUMMARY: In this document, we present information on the recent addition of the northern sea otter (*Enhydra lutris kenyoni*) found in the Aleutian Islands to the list of candidates for listing under the Endangered Species Act of 1973, as amended. Identification of candidate taxa can assist environmental planning efforts by providing advance notice of potential listings, allowing resource managers to alleviate threats and thereby possibly remove the need to list taxa as endangered or threatened. Even if we subsequently list this candidate species, the early notice provided here could result in fewer restrictions on activities by prompting candidate conservation measures to alleviate threats to this species.

We also announce the availability of the candidate and listing priority assignment form for this candidate species. This document describes the status and threats that we evaluated to determine that the northern sea otter in the Aleutian Islands warrants consideration for listing, and to assign a listing priority to this species.

We request additional status information that may be available for the northern sea otter. We will consider this information in evaluating, monitoring, and developing conservation strategies for this species.

DATES: We will accept comments on this document at any time.

ADDRESSES: Submit written comments and data regarding the northern sea otter to the Marine Mammals Management Office, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Douglas Burn, Wildlife Biologist, Marine Mammals Management Office at the above address, or telephone 907/786–3800 or facsimile 907/786–3816.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that we list taxa of wildlife and plants that are endangered or threatened, based on the best available scientific and commercial information. As part of this program, we also identify taxa that we regard as candidates for listing. Candidate taxa are those taxa for which we have on file sufficient information to support issuance of a proposed rule to list under the Act. In addition to our annual review of all candidate taxa (64 FR 57534; October 25, 1999), we have an on-going review process, particularly to update taxa whose status may have changed markedly.

Section 3 of the Act generally defines an endangered species as any species which is in danger of extinction throughout all or a significant portion of its range, and a threatened species as any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act:

(A) The present or threatened destruction, modification, or curtailment of the species' habitat or range;

(B) Overutilization of the species for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation affecting the species;

(D) The inadequacy of existing regulatory mechanisms to protect the species; and

(E) Other natural or manmade factors affecting the species' continued existence.

We are required to make the listing determination ''solely on the basis of the best scientific and commercial data available'' and ''taking into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction, or on the high seas.'' Sections 4(a)(1) and 4(b)(1)(A) and our regulations at 50 CFR 424.11(f) require us to consider any State or local laws, regulations, ordinances, programs, or other specific conservation measures that either positively or negatively affect a species' status (*i.e.,* efforts that create, exacerbate, reduce, or remove threats identified through the section 4(a)(1) analysis).

We maintain the list of candidate species for a variety of reasons, including: to provide advance knowledge of potential listings that could affect decisions of planners and developers; to solicit input from interested parties to identify those candidate taxa that may not require protection under the Act or additional taxa that may require the Act's protections; to solicit information on the status of species and measures necessary to conserve species, and to solicit information needed to prioritize the order in which we will propose taxa for listing. We encourage consideration of candidate taxa in environmental planning, such as in environmental impact analysis under the National Environmental Policy Act of 1969 (implemented at 40 CFR parts 1500–1508) and in local and Statewide land use planning.

According to our 1983 Listing Priority System (48 FR 43098; September 21, 1983), all species that are candidates for listing are assigned a listing priority number. This system ranks species according to—(1) the magnitude of threats they face, (2) the immediacy of these threats, and (3) the taxonomic distinctiveness of the entity that may be listed. Listing priority numbers range from 1 (highest priority) to 12 (lowest priority). We will complete proposals to list candidate species, based on their listing priority, to the extent that our resources for listing activities and our workload for other listing activities will allow.

This notice provides specific explanations of why we classified the northern sea otter as a candidate. This decision was approved by the Service's Director Jamie Rappaport Clark, on August 22, 2000. It is important to note that candidate assessment is an ongoing function and changes in status should be expected. If we remove taxa from the candidate list, they may be restored to candidate status if additional information supporting such a change becomes available to us. We issue requests for such information in a Candidate Notice of Review published in the **Federal Register** every year.

Findings

The worldwide population of sea otters in the early 1700s has been estimated at 150,000 (Kenyon 1969) to 300,000 (Johnson 1982). Extensive commercial hunting of sea otters began following the arrival in Alaska of Russian explorers in 1741 and continued during the 18th and 19th centuries. By the time sea otters were afforded protection from commercial harvests by international treaty in 1911, the species was nearly extinct throughout its range, and may have numbered only 1,000–2,000 individuals (Kenyon 1969).

Following the international treaty in 1911, only 13 isolated remnant populations scattered throughout the historic range remained. However, once commercial harvests ceased, these populations began to grow and recolonize their former range. Today three subspecies of sea otter have been identified (Wilson *et al.* 1991). The northern sea otter contains two subspecies: *Enhydra lutris kenyoni* which occurs from the Aleutian Islands to Oregon, and *Enhydra lutris lutris* which occurs in the Kuril Islands, Kamchatka Peninsula, and Commander Islands in Russia. The third subspecies, *Enhydra lutris nereis,* occurs in California and is known as the southern sea otter.

The period of recolonization was marked by high reproductive rates and range expansion. Survey data indicate that otters were present in all island groups in the Aleutians by the 1980s (Brueggeman *et al.* 1988, Estes 1990). Calkins and Schneider (1985) calculated the sea otter population in the Aleutians as 55,100 to 73,700 individuals, which represented over half the Alaska population. The entire Aleutian archipelago was not systematically surveyed again until 1992. During these surveys Evans *et al.* (1997) estimated the Aleutian Islands sea otter population as 19,157 ± 3,281. The most striking results of this survey were that sea otter density and abundance in the Rat, Delarof, and western Andreanof Islands had unexpectedly declined by more than 50 percent. Boat-based surveys of sea otters at several islands in the Near, Rat, and Andreanof Islands further documented an ongoing decline of sea otters during the 1990s (Estes *et al.* 1998). As few as 6,000 sea otters may remain in the Aleutians today (U.S. Fish & Wildlife Service, Unpublished Data).

Potential threats include both natural fluctuations and human activities, which may have caused changes in the Bering Sea ecosystem. Subsistence hunting occurs at very low levels and does not appear to be a factor in the decline. While disease, starvation, and contaminants have not been implicated at this time, additional evaluation of these factors is warranted. The hypothesis that predation by killer whales is causing the sea otter decline (Estes *et al.* 1998) should also be studied further.

Due to the precipitous and rapid nature of the ongoing population decline, we have assigned the northern sea otter in the Aleutian Islands listing a priority of three under our Listing Priority System. Additionally we note that the imminence of the threats underscores the urgent need for more information regarding the cause of the decline in this population.

Request for Information

We request you submit any further information on the northern sea otter as soon as possible or whenever it becomes available. We are seeking the following types of information:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the northern sea otter;

(2) Reasons why any habitat of this species should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Information regarding the range, status, habitat needs, and listing priority assignment for the northern sea otter is available for review by contacting the Service as specified 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. In certain 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.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Marine Mammals Management Office (see **ADDRESSES** section).

References Cited

Brueggeman, J.J., G.A. Green, R.A. Grotefendt, and D.G. Chapman. 1988. Aerial surveys of sea otters in the northwestern Gulf of Alaska and southeastern Bering Sea. Minerals Management Service and National Oceanic and Atmospheric Administration Final Report. Anchorage, Alaska.

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Estes, J.A. 1990. Growth and equilibrium in sea otter populations. Journal of Animal Ecology 59:385–401.

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Johnson, A.M. 1982. Status of Alaska sea otter populations and developing conflicts with fisheries. Trans. 47th North American Wildlife and Natural Resources Conference:293–299.

Kenyon, K. W. 1969. The Sea Otter in the Eastern Pacific Ocean. United States Department of the Interior. North American Fauna, Number 68. 352 pp.

Wilson, D.E., M.A. Bogan, R.L. Brownell, Jr., A.M. Burdin, and M.K. Maminov. 1991. Geographic variation in sea otters, *Enhydra lutris.* Journal of Mammalogy 72:22–36.

Author

This notice was compiled from materials supplied by staff biologists located in the Service's regional and field offices. The materials were compiled by, Division of Endangered Species (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

Dated: November 3, 2000.

David B. Allen,

Regional Director, U. S. Fish and Wildlife Service, Region 7.

[FR Doc. 00–28796 Filed 11–8–00; 8:45 am]

BILLING CODE 4310–55–U

Notices

Federal Register

Vol. 65, No. 218

Thursday, November 9, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Jasper Fire Value Recovery EIS—Black Hills National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Black Hills National Forest will prepare an environmental impact statement on a proposal to recover value from fire-killed timber within the Jasper Fire perimeter. The Jasper Fire burned approximately 83,500 acres in August and September 2000. Fire-killed ponderosa pine in the Black Hills is highly susceptible to damage from insects and fungus. Expectations are that wood quality within the fire area will decline at a moderate rate until mid-summer 2001. Wood quality is expected to decline rapidly after that point. The Forest Plan goals and objectives that will be met include minimizing public safety hazards through hazard tree removal, maintaining soil productivity and minimizing soil erosion, managing fuel loading, and capturing economic values associated with restoration treatments. The EIS will be designed to satisfy the requirements of the National Environmental Policy Act, 42 U.S.C. Sections 4321–4370a, and the National Forest Management Act, 16 U.S.C. 1600–1614, and their respective implementing regulations.

DATES: Comments concerning the scope of the analysis should be received on or before 30 days after publication of this notice in the Federal Register.

ADDRESSES: Send written comments to Mike Lloyd, District Ranger, Hell Canyon Ranger District, Black Hills National Forest, 330 Mt. Rushmore Road, Custer, SD 57730.

FOR FURTHER INFORMATION CONTACT: Kelly Honors, EIS Team Leader, (605) 673–4853.

SUPPLEMENTARY INFORMATION: The proposed action is to recover value from timber killed by the Jasper Fire. Specifically this includes removing up to 60 million board feet of timber, concentrating in areas with high volume per acre; removing timber in areas with high and moderate intensity burns only (trees 100% scorched or totally devoid of needles) except incidental removal of green trees where necessary to access harvest units; no new specified road construction (temporary roads may be utilized for access but would be closed post-harvest); and lastly, concentrating value recovery from areas with low susceptibility to soil erosion, compaction and water runoff. Resource protection measures are included as part of the proposed action. Mitigation measures will be included to protect resources such as mountain grasslands, snags, soils, heritage resources, water quality and wildlife.

Decision To Be Made

The Forest Service will prepare an EIS. The Forest Supervisor of the Black Hills National Forest will decide whether or not to implement this project, and if so, in what manner.

Responsible Official

John Twiss, Forest Supervisor, Black Hills National Forest, North Highway 385, Custer, South Dakota 57730 is the Responsible Official for this decision. He will document his decision in a Record of Decision.

Estimated Dates for Filing

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by December 15, 2000. At that time EPA will publish a Notice of Availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**. It is very important that those interested in the management of this area participate at that time.

The final EIS is scheduled to be completed by March 2001. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

The Reviewers Obligation To Comment

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: November 3, 2000.

John C. Twiss,

Forest Supervisor, Black Hills National Forest.

[FR Doc. 00–28766 Filed 11–8–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DoC) has submitted to the Office of Management and Budget (OMB) for clearance the following information collection under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 5).

Agency: Economic Development Administration (EDA).

Title: Award for Excellence in Economic Development.

Agency Form Number: Not applicable.

OMB Approval Number: 0610–0097.

Type of Request: Regular submission.

Burden: 150 hours.

Average Hours Per Response: 3.

Number of Respondents: Approximately 50 respondents.

Needs and Uses: EDA provides a broad range of economic development assistance to help distressed communities design and implement effective economic development strategies. Part of this assistance includes disseminating information about best practices and encouraging collegial learning among economic development practitioners. EDA has created the Award for Excellence in Economic Development to recognize outstanding economic development activities of national importance. In order to make Awards for Excellence in Economic Development, EDA must collect two kinds of information: (a) Information identifying the nominee and contacts within the organization being nominated and (b) information explaining why the nominee should be given the award. The information will be used to determine those applicants best meeting the preannounced selection criteria. Use of a nomination form standardizes and limits the information collected as part of the nomination process. This makes the competition fair and eases any burden on applicants and reviewers alike. Participation in the competition is voluntary. The award is strictly honorary.

Affected Public: State, local or Tribal Government and not-for profit organizations.

Frequency: Annually.

Respondent's Obligation: Required to obtain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Forms Clearance Officer, (202) 482–3129, U.S. Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: November 3, 2000.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–28762 Filed 11–8–00; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–805]

Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On July 6, 2000, the Department of Commerce (the ''Department'') published the preliminary results of administrative review of the antidumping duty order on aramid fiber formed of poly para-phenylene terephthalamide (''PPD–T aramid'') from the Netherlands. The review covers one manufacturer/exporter, Twaron Products V.o.F., and its U.S. affiliate, Twaron Products, Inc. (collectively ''Twaron Products''). The period of review (''POR'') is June 1, 1998, through May 31, 1999.

Based on our analysis of the comments received, we have made no changes in the margin calculations. Therefore, the final results do not differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled ''Final Results of the Review.''

EFFECTIVE DATE: November 9, 2000.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or Michael Grossman, AD/CVD Enforcement, Office VI, Group II, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2786.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the ''Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (1999).

Background

On July 6, 2000, the Department published the preliminary results of administrative review of the antidumping duty order on PPD–T aramid from the Netherlands. *See Preliminary Results of Antidumping Administrative Review; Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands,* 65 FR 41626 (July 6, 2000). The review covers one manufacturer/exporter, Twaron Products V.o.F. The POR is June 1, 1998, through May 31, 1999. We invited interested parties to comment on our preliminary results of review. We received comments on August 7, 2000, from E.I. Dupont de Nemours & Company (''petitioner''). On August 14, 2000, we received a rebuttal brief from Twaron Products. The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

The products covered by this review are all forms of PPD–T aramid from the Netherlands. These consist of PPD–T aramid in the form of filament yarn (including single and corded), staple fiber, pulp (wet or dry), spun-laced and spun-bonded nonwovens, chopped fiber, and floc. Tire cord is excluded from the class or kind of merchandise subject to this order. This merchandise is currently classifiable under the Harmonized Tariff Schedule of the United States (''*HTSUS*'') item numbers 5402.10.3020, 5402.10.3040, 5402.10.6000, 5503.10.1000, 5503.10.9000, 5601.30.0000, and 5603.00.9000. The *HTSUS* item numbers are provided for convenience and Customs purposes. The written description of the scope remains dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the ''*Issues* and Decision Memorandum'' (''*Decision Memorandum*'') from Holly

A. Kuga, Acting Deputy Assistant Secretary for Import Administration, to Richard W. Moreland, Acting Assistant Secretary for Import Administration, dated concurrently with this notice, which is hereby adopted by this notice. A list of the issues which parties have raised, and to which we have responded in the *Decision Memorandum*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099 (''B–099'') of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Final Results of Review

We determine that the following percentage weighted-average margin exists for the period June 1, 1998, through May 31, 1999:

Manufacturer/exporter	Margin (percent)
Twaron Products	3.20

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated an exporter/importer-specific assessment rate by dividing the total dumping margins for the reviewed sales by the total entered value of those reviewed sales. Where the importer-specific assessment rate is above *de minimis,* we will instruct Customs to assess antidumping duties on that importer's entries of subject merchandise.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of PPD–T aramid from the Netherlands entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 66.92 percent. This rate is the ''All Others'' rate from the LTFV investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 3, 2000.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum Comments and Responses

1. Constructed Export Price
A. Consolidated Financial Statements Used to Calculate Financial Expenses (U.S. Indirect Selling Expenses)
B. Credit Period for Imputed Credit Expenses Related to Consignment Sales
C. Duties Related to Duty Drawback (Movement Expenses—Canadian Duties)
2. Cost of Production
A. Consolidated Financial Statements Used to Calculate Net Interest Expense
B. Treatment of Goodwill Expenses

[FR Doc. 00–28834 Filed 11–8–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Notice of Postponement of Final Results of Antidumping Duty Administrative Review: Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of postponement of final results of antidumping duty administrative review.

EFFECTIVE DATE: November 9, 2000.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva or James Doyle, Office IX, DAS Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–6412 and (202) 482–0159, respectively.

Postponement of Preliminary Determination

The Department of Commerce (''the Department'') is postponing the final results in the antidumping duty administrative review of Certain Stainless Steel Butt-Weld Pipe Fittings (''SSBWPF'') from Taiwan. The deadline for issuing the final results in this administrative review is now December 15, 2000.

On July 29, 1999, the Department initiated this administrative review. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 64 FR 41075 (July 29, 1999). The date for issuing the final results of the review was November 3, 2000. In order to provide interested parties an opportunity to comment on the issue of reimbursement, which arose late in the proceeding, we are extending the time limit for the final results of the administrative review of SSBWPF from Taiwan by 42 days, in accordance with section 751(a)(3) of the Tariff Act of 1930, as amended. See November 3, 2000 memorandum from Edward Yang to Joseph Spetrini: *Extension of Time Limit for the Administrative Review of Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan.*

The date for issuing the final results is moved from November 3, 2000 to December 15, 2000.

Dated: November 3, 2000.

Edward C. Yang,

Acting Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 00–28833 Filed 11–8–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Form, and OMB Number: Health Professions Accessions Forms; AETC Forms 1402, 1437; OMB Number 0701–0078.

Type of Request: Extension.

Number of Respondents: 3,600.

Responses per Respondent: 1.

Annual Responses: 3,600.

Average Burden per Response: 1 hour.

Annual Burden Hours: 3,600.

Needs and Uses: Respondents are civilian candidates applying for a commission in the U.S. Air Force as health care officers. These forms provide pertinent information to facilitate selection of candidates for a commission.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Officer of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: November 3, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–28721 Filed 11–8–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Visitors Meeting

AGENCY: Department of Defense Acquisition University.

ACTION: Board of visitors meeting.

SUMMARY: The next meeting of the Defense Acquisition University (DAU) Board of Visitors (BoV) will be held at the Packard Conference Center, Building 184, Ft. Belvoir, Virginia on Wednesday December 6, 2000 from 0900 until 1500. The purpose of this meeting is to report back to the BoV on continuing items of interest.

The meeting is open to the public; however, because of space limitations, allocation of seating will be made on a first-come, first served basis. Persons desiring to attend the meeting should call Mr. John Michel at 703.805.4575.

Dated: November 3, 2000.

L.M. Bynum,

Alternate OSD Federal Liaison Officer, Department of Defense.

[FR Doc. 00–28719 Filed 11–8–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on December 5, 2000; December 12, 2000; December 19, 2000; and December 26, 2000, at 10:00 a.m. in Room A105, The Nash Building, 1400 Key Boulevard, Rosslyn, Virginia.

Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: November 3, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–28720 Filed 11–8–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Army

Final Environmental Assessment (EA) and Finding of No Significant Impact (FNSI) for BRAC 95 Disposal and Reuse of Rio Vista Army Reserve Center, California

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: In accordance with Public Law 101–510 (as amended), the Defense Base Closure and Realignment Act of 1990, the Defense Base Closure and Realignment Commission recommended the closure of Rio Vista Reserve Center.

The Final EA evaluates the environmental impacts of the disposal and subsequent reuse of the 28-acre installation. Alternatives examined in this EA include no action, unencumbered disposal of the property and encumbered disposal of the property. Encumbered disposal refers to transfer or conveyance of property having restrictions on subsequent use as a result of any Army-imposed or legal restraint. Under the no action alternative, the Army would not dispose of property but would maintain it in a caretaker status for an indefinite period.

DATES: Comments must be submitted by December 11, 2000.

ADDRESSES: Copies of the Final EA and FNSI may be obtained by writing to Mr. Jerry Fuentes, Corps of Engineers, Sacramento District, Environmental Resources Branch (CESPK–PD–R), 1325 J Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Fuentes at (916) 557–6706.

SUPPLEMENTARY INFORMATION: While closure of Rio Vista is the Army's primary action, the EA also analyzes the potential environmental effects of reuse as a secondary impact by means of evaluating intensity-based reuse scenarios. The Army's preferred alternative for disposal of the Rio Vista Reserve Center is encumbered disposal, with encumbrances pertaining to easements, threatened and endangered species habitat, lead-based paint and asbestos-containing material.

A Notice of Intent declaring the Army's intent to prepare an EA for the

closure of Rio Vista Reserve Center was published in the **Federal Register** on September 22, 1995 (60 FR 49264).

The Final EA and FNSI are available for review at the Rio Vista Library, 167 Main St, Rio Vista, CA 94571.

Dated: September 26, 2000.

Richard E. Newsome,

Acting Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I&E).

[FR Doc. 00–28777 Filed 11–8–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Planning and Steering Advisory Committee (PSAC)

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The purpose of this meeting is to discuss topics relevant to Fleet Ballistic Missile Submarine (SSBN) security.

DATES: The meeting will be held on December 14, 2000, from 9:00 a.m. to 4:00 p.m.

ADDRESSES: The meeting will be held at the Center for Naval Analyses, 4825 Mark Center, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Randy Craig, CNO–N875C2, 2000 Navy Pentagon, NC–1, Washington, DC 20350–2000, (703) 604–7392.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The entire agenda will consist of classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that all sessions of the meeting shall be closed to the public because they concern matters listed in 552b(c)(1) of title 5, U.S.C.

Dated: October 31, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–28814 Filed 11–8–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; American Pipe Lining, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to American Pipe Lining, Inc., a revocable, nonassignable, exclusive license in the United States to practice the Government-owned invention described in U.S. Patent No. 5,707,702, entitled ''Epoxy Pipelining Composition and Method of Manufacture,'' issued January 13, 1998.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than January 8, 2001.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW, Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW, Washington, DC 20375–5320, telephone (202) 767–7230.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: October 31, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–28813 Filed 11–8–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

State Energy Program Special Projects Financial Assistance

AGENCY: Department of Energy, Office of Energy Efficiency and Renewable Energy.

ACTION: Notice for 2001 State Energy Program Special Projects.

SUMMARY: As options offered under the State Energy Program (SEP) for fiscal year 2001, the Office of Energy Efficiency and Renewable Energy is announcing the availability of financial assistance to States for a group of special project activities. Funding is being provided by a number of end-use sector programs in the Office of Energy Efficiency and Renewable Energy. States may apply to undertake any of the projects being offered by these programs. Financial assistance will be awarded to the States separately for each special project, with the activities to be carried out in conjunction with their efforts under SEP. The special projects funding and activities are tracked separately so that the end-use sector programs may follow the progress of their projects.

The projects must meet the relevant requirements of the program providing the funding, as well as of SEP, as specified in the 2001 Special Projects Announcement. Among the goals of the special projects activities are to assist States to: accelerate deployment of energy efficiency and renewable energy technologies; facilitate the acceptance of emerging and underutilized energy efficiency and renewable energy technologies; and increase the responsiveness of Federally funded technology development efforts to private sector needs.

DATES: The program announcement will be available on November 6, 2000. Applications must be received by February 23, 2001.

ADDRESSES: Complete information about this program, including phone numbers for the State SEP offices and a question and answer forum, is available at the following website: http://www.eren.doe.gov/buildings/state__energy/fy01/sepsp01-forum. Otherwise, for referral to the appropriate DOE Regional Office or State Office, you may contact Mr. Thomas Stapp at the U.S. Department of Energy Headquarters, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–2096.

SUPPLEMENTARY INFORMATION: Fiscal year 2001 is the sixth year special project activities have been funded in conjunction with the State Energy Program (10 CFR part 420). Most of these State-oriented special projects are related to or based on similar efforts that have been funded separately by the various DOE end-use sector programs that are now providing funding for these optional SEP activities.

Availability of Fiscal Year 2001 Funds

With this publication, DOE is announcing the availability of an estimated $14.8 million in financial assistance funds for fiscal year 2001. The awards will be made though a competitive process. The end-use sector programs that are participating in the SEP Special Projects for fiscal year 2001,

with the estimated amount of funding available for each, are as follows:

• Clean Cities/Alternative Fuels: Accelerating the introduction and increasing the use of alternative fuels and alternative fuel vehicles through the development of infrastructure, niche markets, and clean corridors, and by promoting the use of advanced transportation technologies ($3,800,000).

• Industrial Technologies: Implementing Industries of the Future at the State level by building partnerships among State government agencies, industry, universities and research institutions: to develop new technologies tied to Industries of the Future road maps and visions; and to utilize best practices which can improve energy efficiency, environmental performance and productivity ($2,800,000).

• Codes and Standards: Supporting States' actions to update, implement, and enforce residential and commercial building energy codes ($4,200,000).

• Rebuild America: Helping community and regional partnerships improve commercial and multifamily building energy efficiency ($1,200,000).

• Building America: Applying systems engineering approaches to the development of advanced residential buildings, including production techniques, products and technologies that result in higher quality, energy efficient housing ($300,000).

• Energy and Environment Integration: Encouraging State-wide pilot projects with specific environmental benefits ($500,000).

• Federal Energy Management Program: Developing Federal/State partnerships to increase technical capability and funding for energy efficiency, renewable energy, and water conservation measures for Federal buildings ($400,000).

• Hydrogen Reformer Field Verification: Siting and operating small advanced hydrogen reformer systems to better understand and document the performance, maintenance, operation and economic viability of these systems ($500,000).

• Geothermal Energy Resource Assessments: Identifying potential areas or sites for geothermal power development in a State or region in the West (DOE Denver and Seattle Regional Office areas only) ($200,000).

• Biomass Power Projects: Recovering and using biogas for energy and other applications by assessing the feasibility of site-specific projects or implementing actual site-specific projects ($300,000).

• Brightfields—Redeveloping Brownfields with Solar Energy: Deploying solar energy technologies onto brownfields or landfill sites through solar arrays on the site; solar technologies integrated into buildings on the site; or a solar energy related business locating on the site ($100,000).

• Wind Energy Case Studies: Performing case studies documenting the benefits and costs of deployment of 25 to 50 megawatt state of the art wind turbines ($200,000).

• Distributed Energy Resources: Performing studies on cooling, heating and power applications and on streamlining siting and permitting, and analyses on constraints and placement of distributed technologies to support load ($300,000).

Restricted Eligibility

Eligible applicants for purposes of funding under this program are limited to the 50 States, the District of Columbia, Puerto Rico, and any territory or possession of the United States, specifically, the State energy or other agency responsible for administering the State Energy Program pursuant to 10 CFR part 420. For convenience, the term State in this notice refers to all eligible State applicants.

The Catalog of Federal Domestic Assistance number assigned to the State Energy Program Special Projects is 81.119.

Requirements for cost sharing contributions will be addressed in the program announcement for each special project activity, as appropriate. Cost sharing contributions beyond any required percentage are desirable.

Any application must be signed by an authorized State official, in accordance with the program announcement.

Evaluation Review and Criteria

A first tier review for completeness will occur at the appropriate DOE Regional Office. Applications found to be complete will undergo a merit review process by panels comprised of members representing the participating end-use sector programs in DOE's Office of Energy Efficiency and Renewable Energy. The end-use sector offices select projects for funding. The Office of Building Technology Assistance then recommends project allocations to the Assistant Secretary for Energy Efficiency and Renewable Energy for final determination. DOE reserves the right to fund, in whole or in part, any, all or none of the applications submitted in response to this notice.

Issued in Washington, D.C., on November 6, 2000.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 00–28843 Filed 11–8–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–71–000]

Algonquin Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 3, 2000.

Take notice that on October 31, 2000, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Eleventh Revised Sheet No. 40 and Fourth Revised Sheet No. 686, to become effective on December 1, 2000.

Algonquin states that, pursuant to section 32 of the General Terms and Conditions of its FERC Gas Tariff, it is filing to revise the Fuel Reimbursement Percentages (FRPs) for the calendar periods beginning December 1, 2000. Algonquin states that the use of actual data for the latest available 12-month period yields decreased FRPs which, compared to the last FRQ annual filing, consist of a 0.06% decrease in the FRP for the Winter season and 0.28% decrease for the Non-Winter seasons. Algonquin proposes to change its tariff to provide for the levelization of the three Non-Winter periods in response to requests from customers for rate stability and in compliance with the Commission's directive in approving Algonquin's last annual FRP filing. Algonquin specifically requests that its tariff changes be accepted by the Commission in order to permit Algonquin to continue to combine the three seasonal periods as proposed.

Algonquin also states that it is submitting the calculation of the fuel reimbursement quantity (FRQ) deferral allocation, pursuant to section 32.5(c) which provides that Algonquin will calculate surcharges or refunds designed to amortize the net monetary value of the balance in the FRQ Deferred Account at the end of the previous accumulation period. Algonquin states that for the period August 1, 1999 through July 31, 2000, the FRQ Deferred Account resulted in a net credit balance that will be refunded to Algonquin's customers, based on the allocation of the account balance over the actual

throughput during the accumulation period, exclusive of backhauls.

Algonquin states that copies of this filing were mailed to all affected customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Davis P. Boergers,

Secretary.

[FR Doc. 00–28759 Filed 11–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–67–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 3, 2000.

Take notice that on October 31, 2000, ANR Pipeline Company (ANR) tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1, the Fifth Revised Sheet No. 45E.01 to be effective December 1, 2000.

ANR states that the purpose of this filing is to designate in its tariff a new point eligible for service under its existing Rate Schedule IPLS.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 of 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–28753 Filed 11–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–70–000]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Tariff Filing

November 3, 2000.

Take notice that on October 31, 2000, Kinder Morgan Interstate Gas Transmission LLC, (KMIGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1–A and Fourth Revised Volume 1–B, the tariff sheets listed on appendix A to the filing, to become effective December 1, 2000.

KMIGT states that the proposed changes update the KMIGT tariff and clarify certain tariff provisions with respect to KMIGT's tariff provisions governing negotiated rates, in accordance with current Commission policy and decisions concerning tariff filings made by other interstate pipelines with respect to negotiated rate authority.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–28758 Filed 11–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–68–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

November 3, 2000.

Take notice that on October 31, 2000, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Sixteenth Revised Sheet No. 22, to be effective December 1, 2000.

Natural states that the filing is submitted pursuant to Section 21 of the General Terms and Conditions (GT&C) of its Tariff as the fifteenth semiannual limited rate filing under Section 4 of the Natural Gas Act and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission) promulgated thereunder. The rate adjustments filed for are designed to recover Account No. 858 stranded costs incurred by Natural under contracts for transportation capacity on other pipelines. Costs for any Account No. 858 contracts specifically excluded under Section 21 are not reflected in this filing.

Natural states that copies of the filing are being mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion

to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–28756 Filed 11–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–21–000]

Ozark Gas Transmission, L.L.C. and Arkansas Western Pipeline, L.L.C.; Notice of Application

November 3, 2000.

Take notice that on October 27, 2000, Ozark Gas Transmission, L.L.C. (Ozark), 104 Central Park One, 525 Central Park Drive, Oklahoma City, Oklahoma 73105, and Arkansas Western Pipeline, L.L.C. (AWP), 104 Central Park One, 525 Central Park Drive, Oklahoma City, Oklahoma 73105, filed a joint application pursuant to Sections 7(c) and 7(b) of the Natural Gas Act (NGA) for issuance of a certificate of public convenience and necessity to Ozark to acquire facilities currently owned and operated by AWP and for an order granting AWP permission and approval to abandon its facilities and services by transfer to Ozark, all as more fully set forth in the application which is on file with the Commission and open 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).

Any questions regarding this application should be directed to counsel for Ozark and AWP, James F. Bowe, Jr., Dewey Ballantine LLP, at (202) 429–1444, fax (202) 429–1579, or jbowe@deweyballantine.com.

Any person desiring to be heard or making any protest with reference to said petition should on or before November 24, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/cfi/doorbell.htm.*

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, comments will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this petition if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the requested exemption is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for AWP or Ozark to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–28752 Filed 11–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–73–000]

Southwest Gas Transmission Company, A Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

November 3, 2000.

Take notice that on October 31, 2000, Southwest Gas Transmission Company, A Limited Partnership (SGTC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 2, the following tariff sheets to become effective December 1, 2000.

First Revised Sheet No. 4
Original Sheet No. 28A

SGTC states that the proposed changes would increase revenues from jurisdictional service by $121,138 based on the 12-month period ending August 31, 2000, as adjusted.

SGTC indicates that the principal items of cost changes producing its deficiency are: (1) Increases in plant and related items due to the construction of facilities to establish an interconnection

with Transwestern Pipeline Company; and (2) the incurrence of additional operation and maintenance expenses.

SGTC states that it has served copies of its filing on its affected customer and interested state regulatory commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–28754 Filed 11–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–69–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 3, 2000.

Take notice that on October 31, 2000, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2, the tariff sheets listed on Appendix B to the filing, to become effective December 1, 2000.

Texas Eastern states that it is reducing its rates to effect an annual cost reduction of approximately $137 million at December 1, 2000 and to effect new applicable shrinkage factors for the year commencing December 1, 2000. Texas Eastern states that the approximate $137 million rate reduction filing is based upon the projected full recovery of Order No. 636 transition costs as of December 1, 2000, and that if Texas Eastern has in fact overrecovered its Non-Spot Costs as of December 1, 2000, Texas Eastern will return any such excess collection to its customers as described herein by crediting the ASA Deferred Account for ultimate flow back to its customers.

Texas Eastern also states that to the extent that the actual data establishes that Texas Eastern has not fully recovered such Non-Spot Costs before December 1, 2000, Texas Eastern will voluntarily absorb any such unrecovered Non-Spot Costs in order to assure its customers a rate reduction for the upcoming winter.

Texas Eastern states that the revised tariff sheets are being filed (1) pursuant to Section 15.6, Applicable Shrinkage Adjustment (ASA), contained in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1, (2) in compliance with the Stipulation and Agreement (Global Settlement) approved by the Commission in its order issued May 12, 1994 [67 FERC ¶ 61,170, reh'g denied, 68 FERC ¶ 61,062 (1994)], and (3) in compliance with the Joint Stipulation and Agreement Amending Global Settlement (Amended Global Settlement) approved by the Commission in its order issued August 28, 1998 [84 FERC ¶ 61,200 (1998)].

Texas Eastern states that the impact of the filing on Texas Eastern's rates, in combination with the Annual PCB–Related Costs filing being filed concurrently, for the upcoming winter to be effective on December 1, 2000, equates to an overall decrease of 8.32 cents for typical long-haul service under Rate Schedule FT–1 from Access Area Zone East Louisiana to Market Zone 3 (ELA–M3) as follows:

Rate impact	100% LF impact ($/dth)
Removal of the Non Spot Fuel Component	($0.0400)
Removal of the Fuel Reservation Charge Adjustment	(0.0350)
Amended Global Settlement Step 2 Rate Reduction	(0.0248)
PCB Year 11 Filing	(0.0053)
ASA Surcharge	(0.0034)
Total Rate Impact	(0.1085)
Fuel Retention Impact:	
Winter Season ASA Percentage Increase—0.62%	
Rate Equivalent at P.I.R.A. projected price of $4.08/dth—$0.0253	
Grand Total Rate Impact—$(0.0832)	

Texas Eastern states that copies of the filing were mailed to all affected customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions

on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–28757 Filed 11–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–72–000]

Wyoming Interstate Company, Ltd.; Notice of Tariff Filing

November 3, 2000.

Take notice that on October 31, 2000, Wyoming Interstate Company (WIC), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, Seventh Revised Sheet No. 4B, with an effective date of December 1, 2000.

WIC states that Seventh Revised Sheet No. 4B, reflects increases in the percentages for Fuel, Lost and Unaccounted-for Gas (FL&U Percentage) from .45% to .63% for its Existing System transport, from 1.72% to 1.92% for its Powder River Incremental transport and from .48% to .68% for its Medicine Bow Incremental transport, based on the data contained in the twelve month data collection period ending August 31, 2000, to be effective on December 1, 2000.

WIC states that copies of the filing were served upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David. P. Boergers,

Secretary.

[FR Doc. 00–28755 Filed 11–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC01–11–000, et al.]

El Paso Generating, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

November 2, 2000.

Take notice that the following filings have been made with the Commission:

1. El Paso Generating, L.L.C., El Paso Energy West Georgia, L.L.C., West Georgia Generating Company, L.P., Mesquite Investors, L.L.C.

[Docket No. EC01–11–000]

Take notice that on October 25, 2000, pursuant to Section 203 of the Federal Power Act, 16 U.S.C. § 824b (1998) and Part 33 of the Commission's Regulations, El Paso Generating, L.L.C., El Paso Energy West Georgia, L.L.C., West Georgia Generating Company, L.P. (West Georgia LP), and Mesquite Investors, L.L.C. (Mesquite) (collectively, Applicants) filed an application for Commission authorization for West Georgia LP to convert its form of business organization to a limited liability company, and for the transfer of ownership interests in the new limited liability company to Mesquite.

Comment date: November 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Merchant Energy Group of the Americas, Inc.

[Docket No. EC01–12–000]

Take notice that on October 26, 2000, Merchant Energy Group of the Americas, Inc. (MEGA) tendered for filing an application pursuant to Section 203 of the Federal Power Act for authorization of a transaction whereby MEGA will assign certain of its wholesale power sales agreements and associated books and records to AES Eastern Energy, L.P. MEGA requests confidential treatment of Exhibit H of the filing.

Comment date: November 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Alliance for Municipal Power

[Docket No. EL00–116–000]

Take notice that on October 23, 2000, Alliance for Municipal Power (AMP or the Alliance), tendered for filing a Petition for Exemption in Lieu of Fee pursuant to AMP's September 29, 2000, Petition for Declaratory Order filed with the Commission in the above-referenced docket. Take further notice that AMP's Petition for Declaratory Order requests the Commission to determine that it, not the New York Public Service Commission, is the proper forum to establish the extent of AMP's stranded cost obligation to Niagara Mohawk Power Company (NMPC) and also to determine that NMPC has no reasonable expectation to continue serving AMP communities at retail.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. South Carolina Electric & Gas Company

[Docket No. ES01–9–000]

Take notice that on October 27, 2000, South Carolina Electric & Gas Company submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue short-term unsecured promissory notes in the form of bank loans and commercial paper in an amount not to exceed $250 million at one time during the period January 1, 2001, through December 31, 2002.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. MidAmerican Energy Company

[Docket No. ER01–266–000]

Take notice that on October 30, 2000, MidAmerican Energy Company (MidAmerican) filed with the Commission a Notice of Cancellation pursuant to Section 35.15 of the Commission's regulations.

MidAmerican requests that the following rate schedule be canceled effective as of December 31, 2000:

1. Firm Power Purchase Agreement dated September 18, 1987 between Iowa Public Service Company (a predecessor company of MidAmerican) and Missouri Joint Municipal Electric Utility Commission. This Agreement has been designated as MidAmerican Rate Schedule No. 74.

MidAmerican has mailed a copy of this filing to Missouri Joint Commission, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: November 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Southwest Power Pool, Inc.

[Docket No. ER01–267–000]

Take notice that on October 30, 2000, Southwest Power Pool, Inc. (SPP) tendered for filing a service agreement for Network Integration Transmission Service with Grand River Dam Authority (Network Customer).

SPP seeks an effective date of October 1, 2000 for the service agreement.

A copy of this filing was served on the Network Customer.

Comment date: November 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Ameren Energy Generating Company

[Docket No. ER01–268–000]

Take notice that on October 30, 2000, Ameren Energy Generating Company, pursuant to section 205 of the Federal Power Act, 16 U.S.C. § 824d, and the market-based rate authority provided to it by the Commission, submitted for filing a long-term lease agreement with Ameren Energy Development Company.

Comment date: November 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Duke Energy South Bay LLC

[Docket No. ER01–269–000]

Take notice that on October 30, 2000, Duke Energy South Bay LLC tendered for filing revised tariff sheets in the above-referenced docket to restate schedules to its Must-Run Schedule.

Comment date: November 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Duke Energy Oakland LLC

[Docket No. ER01–270–000]

Take notice that on October 30, 2000, Duke Energy Oakland LLC tendered for filing revised tariff sheets in the above-referenced docket to restate schedules to its Must-Run Schedule.

Comment date: November 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. MidAmerican Energy Company

[Docket No. ER01–271–000]

Take notice that on October 30, 2000, MidAmerican Energy Company (MidAmerican) filed with the Commission a Notice of Cancellation pursuant to Section 35.15 of the Commission's regulations.

MidAmerican requests that the following rate schedule be canceled effective as of December 31, 2000:

1. Firm Power Interchange Service Agreement dated November 15, 1985, and First Amendment dated November 21, 1986, between Iowa Public Service Company (a predecessor company of MidAmerican) and La Porte City Municipal Utilities. This Agreement has been designated as MidAmerican Rate Schedule No. 86.

MidAmerican has mailed a copy of this filing to La Porte City, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities commission.

Comment date: November 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Commonwealth Edison Company

[Docket No. ER01–272–000]

Take notice that on October 30, 2000, Commonwealth Edison Company (ComEd) submitted for filing two amended Network Service Agreements (NSA) between ComEd and Unicom Energy, Inc. (UEI), and between ComEd and NewEnergy Midwest, L.L.C. (NEMW). The NSAs extend the termination date previously filed with UEI and NEMW on October 29, 1999 in Docket No. ER00–358–000. The NSAs governs ComEd's provision of network service to serve retail load under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of October 1, 2000 for NSAs, and therefore ComEd seeks waiver of the Commission's notice requirements.

Comment date: November 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Commonwealth Edison Company

[Docket No. ER01–273–000]

Take notice that on October 30, 2000, Commonwealth Edison Company (ComEd) submitted for filing an executed Dynamic Scheduling Agreement (DSA) with Alliant Energy Corporate Services, Inc. (Alliant).

ComEd requests an effective date of October 1, 2000 for the DSA to coincide with the effective date of the Firm Transmission Service Agreement with Alliant that the DSA supplements and accordingly seeks waiver of the Commission's notice requirements. ComEd has served a copy of this filing on Alliant.

Comment date: November 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, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–28751 Filed 11–8–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: November 6, 2000, 65 FR 66535.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: November 8, 2000, 11:00 a.m.

CHANGE IN THE MEETING: The time for the Commission meeting scheduled for November 8, 2000, has been changed to 11:00 a.m.

David P. Boergers,

Secretary.

[FR Doc. 00–29009 Filed 11–7–00; 3:53 pm]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

November 3, 2000.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance

of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. The documents may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Exempt		
1. Project No. 8282–015	10–25–00	Rafael Montag, FERC.
2. Project No. 184	10–24–00	Daniel Abeyta.
3. CP98–150–000	10–24–00	Donald J. Stauber.
4. Project No. 3090	10–24–00	Brian T. Fitzgerald.
5. CP00–232–000	10–16–00	John T. Pierpont.
6. CP00–14–000	10–23–00	Joel A. Ivey.
7. CP00–14–000 and CP00–6–00	10–23–00	Marian Ryan.
8. Project No. 1927	10–31–00	Carol Gleichman.
9. CP00–36–000	10–18–00	Laura de la Flor.
10. CP00–36–000	10–18–00	James R. Hartwig.

David P. Boergers,

Secretary.

[FR Doc. 00–28760 Filed 11–8–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–6899–8]

Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources for Other Solid Waste Incinerator Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of revised schedule for promulgation.

SUMMARY: Section 129 of the Clean Air Act (CAA) directs us to develop new source performance standards (NSPS) and emission guidelines (EG) for municipal waste combustors (MWC), hospital/medical/infectious solid waste incinerators (HMIWI), commercial or industrial solid waste incinerators (CISWI), and other solid waste incinerators (OSWI). On November 2, 1993, we published a notice in the **Federal Register** (58 FR 58498) adopting a schedule for the promulgation of standards for OSWI and listing the types of incinerators to be included in that category. In that notice, we adopted a date of November 15, 2000 for promulgation of NSPS and EG for OSWI. This notice revises that schedule and adopts a date of November 15, 2005 for promulgation of NSPS and EG for OSWI.

ADDRESSES: Docket No. A–93–11 contains the supporting information for development of NSPS and EG for OSWI and is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, telephone (202) 260–7548, fax (202) 260–4000. The docket is available at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Porter, Combustion Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711, (919) 541–5251, electronic mail address: porter.fred@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 129 of the CAA requires us to develop NSPS and EG for several categories of solid waste incinerators: MWC, HMIWI, CISWI and OSWI. While the CAA specifies the schedule for promulgation of NSPS and EG for MWC, HMIWI, and CISWI, it does not specify a schedule for the promulgation of NSPS and EG for OSWI. Instead, section 129 requires us to publish a schedule for promulgating NSPS and EG for OSWI.

On November 2, 1993, we published a notice in the **Federal Register** (58 FR 58498) stating that we believed the emissions reductions resulting from NSPS and EG for MWC, HMIWI, and CISWI were likely to outweigh those that could be achieved by NSPS and EG for OSWI. As a result, we announced that we would prioritize our resources and focus first on developing NSPS and EG for MWC, second on developing NSPS and EG for HMIWI, and third on developing NSPS and EG for CISWI. Based on that prioritization and the Administrator's judgement that OSWI are of substantially lesser significance than MWC, HMIWI, and CISWI, we adopted a date of November 15, 2000 for promulgation of NSPS and EG for OSWI.

II. List of Sources in the OSWI Category

In addition to adopting a date of November 15, 2000 for promulgation of NSPS and EG for the OSWI category, we also identified an initial list of incinerators within that category.

Small Incinerators Combusting Municipal Solid Waste are those with capacities of less than 35 tons per day burning municipal solid waste located at plants burning municipal solid waste. Small incinerators burning municipal solid waste are not covered under the NSPS and EG for MWC promulgated on

August 25, 1997 (62 FR 45116 and 62 FR 45124) which apply to MWC with capacities greater than 250 tons per day, nor are they covered under the NSPS and EG for MWC proposed on August 30, 1999 (64 FR 47275 and 64 FR 47233) which apply to MWC with capacities greater than 35 tons per day, but less than or equal to 250 tons per day.

Residential Incinerators are those burning municipal solid waste located at single and multi-family dwellings, hotels and motels.

Agricultural Waste Incinerators are those burning agricultural waste.

Wood Waste Incinerators are those burning wood waste which are not covered by the proposed NSPS and EG for CISWI or the promulgated or proposed NSPS and EG for MWC. There are likely to be very few of those incinerators since the NSPS and EG for CISWI, as well as those for MWC, cover most incinerators burning wood waste.

Construction and Demolition Waste Incinerators are those burning construction and demolition waste.

Crematories and Pathological Incinerators are those burning human or animal tissue or cremating human or animal remains.

Petroleum-Contaminated Soil Treatment Facilities are those burning petroleum-contaminated soil. Sections 104 and 127 of the Comprehensive Environmental Response, Compensation, and Liability Act exclude petroleum from the definition of hazardous wastes; therefore, those incineration units are not regulated as hazardous waste treatment facilities.

Due to the limited information available to date, we cannot state with certainty that the OSWI category covers only those incinerators. As additional information is collected and assessed, we may add or delete incinerators within the OSWI category.

III. Schedule

As mentioned previously, we initially adopted a schedule of November 15, 2000 for promulgating NSPS and EG for OSWI. However, after collecting and assessing a limited amount of information on the various types of OSWI, we believe there may be substantial differences among those incinerators which may merit further subcategorization of OSWI for purposes of regulation. As a result, we have concluded that we need to collect additional information in order to determine the most logical and reasonable approach for developing NSPS and EG for OSWI. Consequently, we are adopting a revised schedule of November 15, 2005 for promulgation of NSPS and EG for the OSWI to allow sufficient time for the collection and analysis of additional information.

Dated: November 3, 2000.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 00–28807 Filed 11–8–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6612–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 2000 (65 FR 20157).

Draft EISs

ERP No. D–COE–H36110–NE Rating EO2, Western Sarpy/Clear Creek Flood Reduction Study Including Environmental Restoration Component, Lower Platte River and Tributaries, Saunders and Sarpy Counties, NE.

Summary: EPA raised objections, noting the potential for significant adverse impacts to natural resources, endangered species, and flood plain values. EPA encouraged the Corps to examine non-structural alternatives to lessen impacts.

ERP No. D–FHW–E40783–SC Rating EC2, Dave Lyle Boulevard Extension, New Location from the S.C. Route 161/Dave Lyle Boulevard Intersection in York County to S.C. Route 75, in the vicinity of the U.S. Route 521/S.C., York County Metropolitan Road Corridor Project, Funding, York and Lancaster Counties, SC.

Summary: EPA expressed concerns regarding potential project impacts related to surface water, wetlands, and threatened and endangered species.

ERP No. D–FHW–H40170–MO Rating LO, U.S. Route 50 East-Central Corridor Study, Highway Improvements from Route 50 to Route 63 east of Jefferson City, Major Transportation Investment Analysis, Osage, Gasconade, and Franklin Counties, MO.

Summary: EPA has no objection to the project as proposed.

ERP No. D–TVA–E39053–TN Rating EO2, Future Water Supply Needs in the Upper Duck River Basin, NPDES Permit and COE Section 404 Permit, Bedford, Marshall, Maury and Williamson Counties, TN.

Summary: EPA expressed objections since EPA does not believe additional source water is needed immediately, especially if conservation measures are implemented during droughts. If selection of a water supply alternative is locally preferred, we recommend implementation of Alternative C over Alternative E if pipeline impacts are minimal or a modification of Alternative E, if feasible, by approximately 2025.

Final EISs

ERP No. F–FHW–F40383–WI WI–113 Wisconsin River Crossing at Merrimac, Improvements, US Coast Guard and COE Section 10 and 404 Permits, Columbia and Sauk Counties, WI.

Summary: EPA has no objections with the preferred alternative.

ERP No. F–FHW–F40387–OH Lancaster Bypass (FAI–US 22/US 33–9.59/9.95) Construction, Funding, Greenfield, Hocking, Berne and Pleasant Townships, Fairfield County, OH.

Summary: EPA's previous concerns have been addressed; EPA does not object to project implementation.

Dated: November 6, 2000.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 00–28839 Filed 11–8–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6612–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or www.epa.gov/oeca/ofa.

Weekly receipt of Environmental Impact Statements filed October 30, 2000 through November 3, 2000 pursuant to 40 CFR 1506.9.

EIS No. 000374, FINAL EIS, FHW, CA, US–7 Expressway Project, Construction between CA–98 to Interstate 8, Improve Access to the new Calexico East Port of Entry, Funding and COE Section 404 Permit, Imperial County, CA, Due: December 4, 2000, Contact: Jeffery S. Lewis (916) 498–5035. This Notice of Availability should have appeared in the 11/3/2000 FR. The Official Wait Period

began on 11/3/2000 and ends on 12/4/2000.

EIS No. 000375, DRAFT EIS, NPS, WA, Mount Rainier National Park General Management Plan, Implementation, Pierce and Lewis Counties, WA, Due: February 9, 2001, Contact: Eric Walkinshaw (360) 589–2211.

EIS No. 000376, FINAL EIS, AFS, ID, Goose Creek Watershed Project, Harvesting Timber and Improve Watershed, Payette National Forest, New Meadows Ranger District, Adams County, ID, Due: December 26, 2000, Contact: Kimberly Brandel (208) 347–0300.

EIS No. 000377, FINAL EIS, COE, MO, Chesterfield Valley Flood Control Study, Improvement Flood Protection, City of Chesterfield, St. Louis County, MO, Due: December 11, 2000, Contact: Deborah Foley (314) 331–8485.

EIS No. 000378, DRAFT EIS, FHW, VA, I–73 Location Study, Between Roanoke and the North Carolina State Line Commonwealth of Virginia, Construction and Operation, Bedford, Botetourt, Franklin, Henry and Roanoke Counties, Cities of Roanoke and Martinsville, VA, Due: January 5, 2001, Contact: J. Bruce Turner (804) 775–3320.

EIS No. 000379, FINAL EIS, COE, WA, Programmatic Green/Duwamish River Basin Restoration Program, Capitol Improvement Type Program and Ecological Health, King County, WA, Due: December 11, 2000, Contact: Patrick Cagney (206) 764–6577.

EIS No. 000380, DRAFT EIS, NRC, GA, Generic EIS—Edwin I. Hatch Nuclear Plant, Unit 1 and 2, License Renewal of Nuclear Plants, Supplement 4 to NUREG–1437, Altamaha River, Appling County, GA, Due: January 24, 2001, Contact: Andrew J. Kugler (301) 415–2828.

Dated: November 6, 2000.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 00–28840 Filed 11–8–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6899–3]

Notice of Public Comment Period for the Draft Report to Congress II From the National Environmental Education Advisory Council

Notice is hereby given that the National Environmental Education Advisory Council, established under Section 9 if the National Environmental Education Act of 1990 (the Act), is providing the public with an opportunity to provide written comments on the draft Report to Congress II. The purpose of this Report is to provide Congress with an assessment of the status of environmental education and to report effects of the Act. The draft Report to Congress II can be found on the Office of Environmental Education web site (*www.epa.gov/enviroed*) until December 31, 2000. Paper copy is available by request only.

Members of the public are invited to submit written comments to Ginger Keho, Office of Environmental Education (1704A), Office of Communications, Education and Media Relations, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW Washington, DC 20460 or by e-mail at *keho.ginger@epa.gov.* Written comments will be accepted until December 31, 2000.

Dated: November 1, 2000.

Ginger Keho,

Designated Federal Official, Office of Environmental Education.

[FR Doc. 00–28809 Filed 11–8–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6898–5]

Notice of Proposed De Minimis Administrative Order on Consent Pursuant to Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9622(g), PCB Treatment Inc., Superfund Site, Kansas City, KS, and Kansas City, MO, Docket No. CERCLA 7–2000–0030

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed De Minimis Administrative Order on Consent, PCB Treatment, Inc., 2100 Wyandotte Street, Kansas City, Missouri; and 45 Ewing Street, Kansas City, Kansas.

SUMMARY: Notice is hereby given that a proposed administrative order on consent regarding the PCB Treatment Inc. Superfund Site was signed by the United States Environmental Protection Agency (EPA) on September 29, 2000 and approved by the United States Department of Justice (DOJ) on October 2, 2000.

DATES: EPA will receive comments on or before December 15, 2000, related to the proposed agreement and covenant not to sue.

ADDRESSES: Comments should be addressed to Audrey Asher, Senior Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, Kansas 66101, and should refer to the PCB Treatment Inc. Superfund Site Administrative Order on Consent, EPA Docket No. CERCLA 7–2000–0030.

The proposed agreement may be examined or obtained in person or by mail at the office of the United States Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, Kansas 66101, (913) 551–7255.

SUPPLEMENTARY INFORMATION: The proposed agreement concerns the PCB Treatment Inc. Superfund Site (''Site''), located at 2100 Wyandotte Street, Kansas City, Missouri and 45 Ewing Street, Kansas City, Kansas. The Site was the location of treatment and storage facilities for materials and equipment containing polychlorinated biphenyls (''PCBs''). PCBs have been found in the concrete of the Ewing building at levels exceeding 15,000 micrograms per kilogram (mg/kg), and in the concrete of the Wyandotte building at levels exceeding 19,700 mg/kg.

As of July 31, 2000, EPA had incurred costs in excess of $1.3 million exclusive of interest. Each of the proposed settlors arranged with PCB Treatment Inc. for disposal of transformers, capacitors, oil, materials or equipment contaminated with PCBs.

EPA has determined that any party who arranged for disposal of transformers, capacitors, oil, materials, or equipment contaminated with PCBs weighting between 630 and 2,760 pounds (in allocated weight) contributed a de minimis volume of waste to the Site and that such wastes are not more toxic than any other hazardous substance at the Site.

Each settlor will pay a share of costs based on its volumetric share of capacitor weight compared to all capacitor weight with an additional premium of 100%.

Through this settlement EPA will recover over $66,000, and will seek remaining costs from other potentially responsible parties at the Site.

Dated: October 19, 2000.

Dennis Grams,

Regional Administrator, Region VII.

[FR Doc. 00–28712 Filed 11–8–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6898–9]

Notice of Proposed Agreement for Recovery of Past Response Costs to the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), Ridgeway Logging Site, Sweet Home, OR

AGENCY: Environmental Protection Agency.

ACTION: Notice; Request for Comment.

SUMMARY: In accordance with Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'') 42 U.S.C. 9622(h)(1), notice is hereby given of a proposed agreement for recovery of past response costs with Mrs. Betty Selander, the owner of the real property upon which the Ridgeway Logging Site, Sweet Home, Oregon, is located. This agreement proposes to recover a portion of EPA's past response costs in response to the release or threatened release of hazardous substances at the Ridgeway Logging Site. EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. 9604. In performing this response action, EPA incurred response costs at or in connection with the Site. The agreement requires Mrs. Betty Selander (hereinafter ''Settling Party'') to pay a total of $70,280.00 to the Hazardous Substance Superfund. The Settling Party consents to and will not contest the Environmental Protection Agency's (EPA's) jurisdiction to enter into this Agreement or to implement or enforce its terms. EPA and the Settling Party desire to resolve the Settling Party's alleged civil liability for Past Response Costs without litigation and without the admission or adjudication of any issue of fact or law. EPA will consider public comments on the proposed Agreement for Recovery of Past Response Costs for thirty days. EPA may withdraw from or modify this proposed agreement should such comments disclose facts or considerations which indicate this proposed agreement is inappropriate, improper, or inadequate.

DATES: Written comments must be provided on or before December 11, 2000.

ADDRESSES: Comments should be addressed to Docket Clerk, U.S. Environmental Protection Agency, Region 10, ORC–158, 1200 Sixth Avenue, Seattle, Washington 98101, and should refer to In Re Ridgeway Logging Site, Sweet Home, Oregon, U.S. EPA Docket No. CERCLA–10–2000–0142.

FOR FURTHER INFORMATION CONTACT: Dean Ingemansen, Office of Regional Counsel (ORC–158), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–1744.

SUPPLEMENTARY INFORMATION:

Authority: The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(h)(i).

Chuck Findley,

Acting Regional Administrator, Region 10.

[FR Doc. 00–28713 Filed 11–8–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51954; FRL–6752–2]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from September 11, 2000 to September 29, 2000, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. The ''S'' and ''G'' that precede the chemical names denote whether the chemical idenity is specific or generic.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51954 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–51954. 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, any test data submitted by the Manufacturer/Importer is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through

Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51954 and the specific PMN number in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically.* You may submit your comments electronically by e-mail to: ''oppt.ncic@epa.gov,'' or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–51954 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from September 11, 2000 to September 29, 2000, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new Chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available. The ''S'' and ''G'' that precede the chemical names denote whether the chemical idenity is specific or generic.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the Chemical identity.

TABLE I. 54 PREMANUFACTURE NOTICES RECEIVED FROM: 09/11/00 TO 09/29/00

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–1179	09/11/00	12/10/00	CBI	(G) Elastomeric tires	(G) 4,4′mdi prepolymer with aliphatic glycol
P–00–1180	09/13/00	12/12/00	3M Company	(S) Chemical intermediate	(G) Polyurethane acrylate copolymer
P–00–1181	09/14/00	12/13/00	CBI	(G) Open, non-dispersive use	(G) Silated urethane polymer
P–00–1182	09/14/00	12/13/00	Vantico Inc. Polymer Specialties	(S) Epoxy curing agent	(G) Propanoic acid, compds. with bisphenol a-an epoxy resin-epichlorohydrin-ethylenediamine-polyethylene glycol polymer-glycidyl o-tolyl ether reaction products
P–00–1183	09/15/00	12/14/00	CBI	(G) Open, non-dispersive (resin)	(G) Aliphatic polyurethane resin

TABLE I. 54 PREMANUFACTURE NOTICES RECEIVED FROM: 09/11/00 TO 09/29/00—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–1184	09/15/00	12/14/00	Inx International Ink Company	(G) Dispersing agent	(G) Phenol, polymer with formaldehyde, glycidyl ether, reaction products with carbomonocylic carboxylic acid and hydroxy alkanoic acid homopolymer
P–00–1185	09/18/00	12/17/00	CBI	(G) Polymeric photoinitiator	(G) 2,5-furandione, telomer with ethenylbenzene and (1-methylethyl)benzene, aralkyl 4-[(1-oxo-2-propenyl)oxy]butyl ester, ammonium salt
P–00–1186	09/18/00	12/17/00	CBI	(G) Polymeric photoinitiator	(G) 2,5-furanedione, telomer with ethenylbenzene and (1-methylethyl)benzene, aralkyl 2-[(2-methyl-1-oxo-2-propenyl)oxy]ethyl ester, ammonium salt
P–00–1187	09/11/00	12/10/00	Aventis Cropscience USA LP	(S) Use as a herbicide safener in formulated pesticide products	(S) 3-isoxazolecarboxylic acid, 4,5-dihydro-5,5-diphenyl-, ethyl ester
P–00–1188	09/18/00	12/17/00	CBI	(G) Printing ink resin	(G) Poly(oxyalkylene)bis(2-maleimidoacetate)
P–00–1189	09/18/00	12/17/00	CIBA Specialty Chemicals Corporation	(S) Photoacid generator for resists in semiconductor and display mfg.	(G) Aromatic thiophene derivative
P–00–1190	09/19/00	12/18/00	CBI	(S) Specialty polymer	(G) Glycidyl substituted bicyclic olefin
P–00–1191	09/19/00	12/18/00	CBI	(G) Open non-dispersive (resin)	(G) Blocked polyisocyanate
P–00–1192	09/20/00	12/19/00	CBI	(G) Rubber elastomer for tires, wheels, rolls and other specialty urethane applications	(G) Toluene diisocyanate terminated polyether polyol
P–00–1193	09/18/00	12/17/00	Clariant Corporation	(G) Destructive end-use	(G) Telogen, telomer with alkenes and alkenyl acetate
P–00–1194	09/18/00	12/17/00	Clariant Corporation	(G) Destructive end-use	(G) Telogen, telomer with alkenes and alkenyl acetate
P–00–1195	09/20/00	12/19/00	Basf Corporation	(S) Basic dye for complex basic dye pigment manufacture	(S) 9-(2-(ethoxycarbonyl)phenyl)-3,6-bis(ethylamino)-2,7-dimethylxanthylium ethyl sulfate
P–00–1196	09/21/00	12/20/00	CBI	(G) Polyurethane adhesive	(G) Polyurethane polymer
P–00–1197	09/21/00	12/20/00	CBI	(S) Additive	(G) Alkohol alkoxylate
P–00–1198	09/21/00	12/20/00	CBI	(S) Additive	(G) Alkohol alkoxylate
P–00–1199	09/22/00	12/21/00	BP Amoco Chemical Company	(S) Polymer for improved gas barrier in multi- and single layer food container applications	(G) Polyester copolymer
P–00–1200	09/22/00	12/21/00	BP Amoco Chemical Company	(S) Polymer for improved gas barrier in multi- and single layer food container applications	(G) Polyester copolymer
P–00–1201	09/22/00	12/21/00	BP Amoco Chemical Company	(S) Polymer for improved gas barrier in multi- and single layer food container applications	(G) Polyester copolymer
P–00–1202	09/22/00	12/21/00	BP Amoco Chemical Company	(S) Polymer for improved gas barrier in multi- and single layer food container applications	(G) Polyester copolymer
P–00–1203	09/22/00	12/21/00	Dainippon Ink and Chemicals, Inc.	(S) Binder for water-base coatings	(G) Polysiloxane-acrylic hybrid resin
P–00–1204	09/22/00	12/21/00	Dainippon Ink and Chemicals, Inc.	(S) Binder for water-base coatings	(G) Polysiloxane-acrylic hybrid resin
P–00–1205	09/25/00	12/24/00	CBI	(G) Intermediate in manufacture of aqueous dye	(G) 6-methoxy-1h-benz[de]isoquinoline-2[3h]-dione derivative
P–00–1206	09/25/00	12/24/00	CBI	(G) Intermediate in manufacture of aqueous dye	(G) 6-chloro-1h-benz[de]isoquinoline-2[3h]-dione derivative
P–00–1207	09/25/00	12/24/00	CBI	(G) Aqueous dye	(G) 6-methoxy-1h-benz[de]isoquinoline-2[3h]-dione derivative
P–00–1208	09/25/00	12/24/00	Rhodia, Inc./formerly Albright & wilson	(S) Viscosity index for improver; hydraulic and gear oils;viscosity index improvers; for shock absorber fluids and other special hydraulics;pour point depressants for hydraulic and gear oils	(S) 2-propenoic acid, 2-methyl, decyl ester, polymer with dodecyl 2-methyl-2-propenoate, hexadecyl 2-methyl-2-propenoate, hexyl 2-methyl-2-propenoate, methyl 2-methyl-2-propenoate, octadecyl 2-methyl-2-propenoate, octyl 2-methyl-2-propenoate and tetradecyl 2-methyl-2-propenoate
P–00–1209	9/25/00	12/24/00	CBI	(G) Chemical intermediate	(G) Aromatic hydrocarbon

TABLE I. 54 PREMANUFACTURE NOTICES RECEIVED FROM: 09/11/00 TO 09/29/00—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–1210	09/25/00	12/24/00	BASF Corporation	(S) Processing aid for leather finishing	(S) Alkenes, c12–24, hydroformylation products, distillation residues
P–00–1211	09/25/00	12/24/00	H.B. Fuller Company	(S) Window assembly adhesive;volumes are a total for all substances combined	(G) Polyester isocyanate prepolymer
P–00–1212	09/25/00	12/24/00	H.B. Fuller Company	(S) Window assembly adhesive;volumes are a total for all substances combined	(G) Polyester isocyanate prepolymer
P–00–1213	09/25/00	12/24/00	H.B. Fuller Company	(S) Window assembly adhesive;volumes are a total for all substances combined	(G) Polyester isocyanate prepolymer
P–00–1214	09/25/00	12/24/00	H.B. Fuller Company	(S) Window assembly adhesive;volumes are a total for all substances combined	(G) Polyester isocyanate prepolymer
P–00–1215	09/22/00	12/21/00	CBI	(G) Multipurpose adhesive;open, nondispersive use;laminating adhesive; open nondispersive use	(G) Polyurethane prepolymer;polyurethane adh.
P–00–1216	09/25/00	12/24/00	Oakite products, Inc. (owned by chemetall gmbh)	(S) Surface layer adhesive for preparing aluminum, magnesium, zinc and steel	(S) Phosphonic acid, 1,12-dodecanediylbis-
P–00–1217	09/27/00	12/26/00	CBI	(S) Raw material used in a photoresist formulation	(G) Diaryliodonium salt
P–00–1218	09/27/00	12/26/00	CBI	(G) Crosslinking agent	(G) Aminosilanol polymer
P–00–1219	09/27/00	12/26/00	CBI	(G) Acrylic binder	(G) Acrylic polymer
P–00–1220	09/27/00	12/26/00	Summit Specialty Chemicals Corporation	(G) Electric molding	(G) Phenol-biphenyl polymer condensate
P–00–1221	09/28/00	12/27/00	CBI	(G) Monomer	(G) Modified vegetable oil
P–00–1222	09/28/00	12/27/00	CBI	(G) Monomer	(G) Modified vegetable oil
P–00–1223	09/28/00	12/27/00	CBI	(G) Monomer	(G) Modified vegetable oil
P–00–1224	09/29/00	12/28/00	CBI	(S) For oem & industrial coatings	(G) Carbamated diol
P–00–1225	09/29/00	12/28/00	Dystar L. P.	(S) Dyestuff for the coloration of cellulose	(G) 1,7-naphthalenedisulfonic acid, 2-[[substitutedamino]-5-hydroxy-6-[(4-methyl-2-sulfophenyl]azo]-, salt
P–00–1226	09/28/00	12/27/00	Dystar L. P.	(S) Dyestuff for the coloration of cellulose	(G) 1,7-naphthalenedisulfonic acid, 2-substitutedamino]-5-hydroxy-6-[(4-methyl-2-sulfophenyl)azo]-, salt
P–00–1227	09/27/00	12/26/00	CBI	(S) Clarifying agent and nucleating agent for plastic articles	(G) 12h-dibenzo[d,g][1,3,2]dioxaphosphocin, aluminum deriv.
P–00–1228	09/27/00	12/26/00	CBI	(G) Additive for plastic film in packaging applications	(G) Substituted benzophenone
P–00–1229	09/18/00	12/17/00	CBI	(S) Polymer used in automotive primers	(G) Acrylic copolymer
P–00–1230	09/29/00	12/28/00	P N Solution	(G) Intermediate for melamine phosphate	(G) Substituted melamine
P–00–1231	09/29/00	12/28/00	P N Solution	(G) Intermediate for urea phosphate	(G) Substituted urea
P–00–1232	09/29/00	12/28/00	P N Solution	(S) Flame retardant for polymers;flame retardant for coatings	(G) Substituted melamine phosphate
P–00–1233	09/29/00	12/28/00	P N Solution	(S) Flame retardant for polymers;flame retardant for coatings	(G) Substituted urea phosphate

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

TABLE II. 35 NOTICES OF COMMENCEMENT FROM: 09/11/00 TO 09/29/00

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0089	09/25/00	08/29/00	(G) Alkyl methacrylate, alkylaminoalkylmethacrylamide copolymer
P–00–0235	09/21/00	09/01/00	(G) Urethane prepolymer
P–00–0274	09/22/00	09/20/00	(G) Amine-salted polyester resin
P–00–0275	09/22/00	09/20/00	(G) Amine-salted polyester resin
P–00–0330	09/21/00	09/18/00	(S) Oxirane, [[[(1r,2s,5r)-5-methyl-2-(1-methylethyl)cyclohexyl]oxy]methyl]-
P–00–0352	09/19/00	09/01/00	(G) Organic disulfide
P–00–0391	09/19/00	08/30/00	(G) Propanenitrile, 3,3'-[[4-[[2-substituted-4-nitro-6-(trihalomethyl)phenyl]azo]phenyl]imino]bis-

TABLE II. 35 NOTICES OF COMMENCEMENT FROM: 09/11/00 TO 09/29/00—Continued

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0426	09/20/00	08/21/00	(G) Inorganic acid reaction product, with alkaline flouride metal salts
P–00–0445	09/26/00	09/12/00	(G) Polyester polyol
P–00–0446	09/26/00	09/15/00	(G) Polyester polyol
P–00–0488	09/21/00	09/01/00	(G) Crosslinked polymethylsiloxane
P–00–0528	09/15/00	08/18/00	(G) Alkali salts of aryl carboxylates
P–00–0588	09/25/00	09/07/00	(G) Ketoxime blocked ppdi/polyether prepolymers
P–00–0611	09/12/00	08/05/00	(S) Hexanedioic acid, polymer with 2,2-dimethyl-1,3-propanediol and 1,2-propanediol, isononyl ester
P–00–0612	09/12/00	08/05/00	(S) Hexanedioic acid, polymer with 2,2-dimethyl-1,3-propanediol and 3-hydroxy-2,2-dimethylpropanoic acid, isononyl ester
P–00–0723	09/26/00	09/18/00	(G) Acrylic polymer
P–00–0730	09/19/00	09/07/00	(G) Polyester urethane
P–00–0731	09/27/00	08/16/00	(S) Phosphonium, ethyltris(4-methylphenyl)-, acetate
P–00–0804	09/20/00	08/29/00	(G) Aliphatic dialdehyde
P–00–0805	09/20/00	08/29/00	(G) Aliphatic dialdehyde
P–00–0807	09/26/00	08/28/00	(G) Substituted cycloalkyl heterocyclic derivative
P–00–0825	09/11/00	08/23/00	(G) Azo dyestuff
P–00–0828	09/29/00	09/08/00	(S) 2,4(1h,3h)-pyrimidinedione, 6-amino-1,3-dimethyl-
P–00–0835	09/14/00	08/23/00	(G) Substituted picolinate
P–00–0845	09/19/00	08/24/00	(G) Epoxy nitrile rubber amine adduct
P–00–0851	09/25/00	08/24/00	(G) C.i. solvent blue 38
P–00–0853	09/25/00	08/24/00	(G) C.i. solvent blue 37
P–00–0863	09/26/00	09/21/00	(G) Carboxylic acid, polymer with 1,2-ethanediol, 2,5-furandione and alicyclic compound
P–96–0840	09/15/00	08/28/00	(S) Dl-alanine, *n,n*-bis(carbooxymethyl)-, trisodium salt
P–97–0386	09/25/00	09/11/00	(G) Polyvinyl fluoride copolymer
P–98–0694	09/19/00	08/22/00	(G) Modified isocyanic acid, polymethylenepolyphenylene ester
P–99–0682	09/20/00	09/12/00	(S) 1,1,1,3,3-pentafluoropropane
P–99–0752	09/18/00	08/23/00	(G) Sulfonated copper phthalocyanine, substituted with aromatic sulfonamid, sodium salt
P–99–1024	09/19/00	08/24/00	(G) Unsaturated polyester
P–99–1100	09/19/00	08/29/00	(G) *N,N*-dimethylethanolamine salt of an oilfree, saturated polyester containing urethane groups

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: October 24, 2000.

Deborah A. Williams,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 00–28716 Filed 11–8–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51955; FRL–6752–8]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new Chemical (i.e., a Chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new Chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the Chemicals under review and the receipt of notices of commencement to manufacture those Chemicals. This status report, which covers the period from October 2, 2000 to October 6, 2000, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new Chemical that the Agency has received under TSCA section 5 during this time period. The ''S'' and ''G'' that precede the chemical names denote whether the chemical idenity is specific or generic.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51955 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at *http://www.epa.gov/*. On the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–51955. 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, any test data submitted by the Manufacturer/Importer is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51955 and the specific PMN number in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically*. You may submit your comments electronically by e-mail to: *oppt.ncic@epa.gov*, or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–51955 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new Chemical (i.e., a Chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new Chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the Chemicals under review and the receipt of notices of commencement to manufacture those Chemicals. This status report, which covers the period from October 2, 2000 to October 6, 2000, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new Chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new Chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available. The ''S'' and ''G'' that precede the chemical names denote whether the chemical idenity is specific or generic.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the Chemical identity.

TABLE I. 21 PREMANUFACTURE NOTICES RECEIVED FROM: 10/02/00 TO 10/06/00

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–01–0001	10/02/00	12/31/00	CBI	(G) Component of optical Polymer	(G) Chloroformate
P–01–0002	10/02/00	12/31/00	CBI	(G) Fuel additive	(G) Linear alkyl polyhydroxypolyester
P–01–0003	10/03/00	01/01/01	Estron Chemical, Inc.	(S) Flow control additive for industrial coatings	(G) Acrylic Polymer
P–01–0004	10/03/00	01/01/01	BASF Corporation	(S) Base/top coat binder for leather finishing	(G) Block Polymer of aromaticdiacid with alkane diamines, polysubstituted cycloalkanes and alkanediols
P–01–0005	10/03/00	01/01/01	CBI	(G) Additive for polyurethane elastomers	(G) Polymeric isocyanate prePolymer
P–01–0006	10/03/00	01/01/01	CBI	(S) Detergent additive;metal cleaning hydrotrope	(G) Ethoxylated glycol ether phosphate salt
P–01–0007	10/03/00	01/01/01	CBI	(G) Contained use bleaching agent	(G) Aliphatic polycarboxylic acid, metal salt
P–01–0008	10/06/00	01/04/01	Johnson Polymer	(G) Open, non-dispersive use	(G) Acrylic polyol
P–01–0009	10/06/00	01/04/01	CBI	(G) Destructive use	(G) Halogenated arylsilane
P–01–0010	10/06/00	01/04/01	CBI	(G) Intermediate for solvent based coatings	(G) Phenol blocked isocyanate
P–01–0011	10/06/00	01/04/01	CBI	(G) Synthetic industrial lubricant for contained use	(G) Pentaerythritol ester of branched and linear fatty acids
P–01–0012	10/06/00	01/04/01	Applied Power Concepts, Inc.	(S) Textile sizing agent	(S) Propanoic acid, 2-hydroxy-, 1,2,3-propanetriyl ester
P–01–0013	10/06/00	01/04/01	Mane, U.S.A.	(S) Aromatic substance (musky note) for perfume	(S) Oxacycloheptadec-11-en-2-one
P–01–0014	10/06/00	01/04/01	JSR Corporation	(G) Coating agent	(G) Modified styrene Polymer dispersion
P–01–0015	10/06/00	01/04/01	CBI	(G) Polymer precursor	(G) Alkyl polysaccharide derivative
P–01–0016	10/06/00	01/04/01	CBI	(G) Components of water-based adhesives and inks	(G) Sugar acrylate copolymer
P–01–0017	10/06/00	01/04/01	CBI	(G) Components of water-based adhesives and inks	(G) Sugar acrylate copolymer
P–01–0018	10/06/00	01/04/01	CBI	(G) Components of water-based adhesives and inks	(G) Sugar acrylate copolymer
P–01–0019	10/06/00	01/04/01	CBI	(G) Components of water-based adhesives and inks	(G) Sugar acrylate copolymer
P–01–0020	10/06/00	01/04/01	CBI	(G) Components of water-based adhesives and inks	(G) Sugar acrylate copolymer
P–01–0021	10/06/00	01/04/01	CBI	(G) Components of water-based adhesives and inks	(G) Sugar acrylate copolymer

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

TABLE II. 11 NOTICES OF COMMENCEMENT FROM: 10/02/00 TO 10/06/00

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0276	10/02/00	09/29/00	(S) 2-propenamide, n-[3-(dimethylamino)propyl]-2-methyl-, Polymer with 1-ethenyl-2-pyrrolidinone, sulfate
P–00–0342	10/03/00	09/29/00	(G) Blocked isocyanate Polymer
P–00–0519	10/06/00	09/15/00	(G) Methyl carboxypentanoate
P–00–0609	10/02/00	09/22/00	(G) Polyglycolether - polycarboxylate
P–00–0702	10/03/00	09/25/00	(G) Olefin oligomers
P–00–0809	10/04/00	09/04/00	(G) Heterocyclic alkyl acid derivative
P–00–0881	10/06/00	10/04/00	(G) Silane ester
P–97–0645	10/02/00	08/31/00	(G) Acrylic copolymer with imidazole
P–98–0487	10/05/00	09/17/00	(G) Polycycloamide
P–99–0067	10/04/00	09/19/00	(G) Modified glycerol ester of tall oil fatty acid
P–99–1244	10/05/00	08/04/00	(G) Catechol-formaldehyde resin

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: November 3, 2000.

Deborah A. Williams,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 00–28717 Filed 11–08–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51957; FRL–6754–8]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from October 9, 2000 to October 20, 2000, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. The ''S'' and ''G'' that precede the chemical names denote whether the chemical identity is specific or generic.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51957 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–51957. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, any test data submitted by the Manufacturer/Importer and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51957 and the specific PMN number in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically.* You may submit your comments electronically by e-mail to: *oppt.ncic@epa.gov*, or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–51957 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI,

please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.''

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from October 09, 2000 to October 20, 2000, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available. The ''S'' and ''G'' that precede the chemical names denote whether the chemical identity is specific or generic.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

TABLE I. 38 PREMANUFACTURE NOTICES RECEIVED FROM: 10/09/00 TO 10/20/00

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–01–0022	10/10/00	01/08/01	Shin-Etsu Silicones of America, Inc.	(S) Additive for silicone rtv rubber compounds;additive for primer	(S) Propanoic acid, 2-(trimethoxysilyl)-, ethyl ester
P–01–0023	10/10/00	01/08/01	CBI	(G) Epoxy hardener - open, non-dispersive use	(G) Part acrylated epoxy cresol novolac acrylate
P–01–0024	10/10/00	01/08/01	CBI	(G) Uv sensitive resin-open, non-dispersive use	(G) Carboxylated epoxy cresol novolac acrylate
P–01–0025	10/10/00	01/08/01	CBI	(S) Waterbased uv curing polymer for wood topcoats (kitchen cabinets) and plastic picture frames and moldings	(G) Polyester polyurethane acrylate block copolymer
P–01–0026	10/10/00	01/08/01	CBI	(G) Open, non-dispersive use	(G) Acrylic polymer salt
P–01–0027	10/10/00	01/08/01	CBI	(G) Destructive use	(G) Acid functional acrylic polymer
P–01–0028	10/10/00	01/08/01	CBI	(G) Open,non-dispersive use	(G) Hydroxy functional acrylic polymer
P–01–0029	10/10/00	01/08/01	CBI	(S) Release finish;textile additive	(G) Dimethicone copolyol polyacrylate
P–01–0030	10/10/00	01/08/01	Ashland Inc.	(G) Lamination adhesive	(G) Polyurethane prepolymer
P–01–0031	10/10/00	01/08/01	CBI	(S) Lubricant for both offshore and onshore oil production sites	(G) Amine phosphate
P–01–0032	10/13/00	01/11/01	CBI	(G) Component of coating with open use	(G) Urethane acrylate
P–01–0033	10/11/00	01/09/01	FMC Corporation	(S) Chemical intermediate	(G) Sulfonamide
P–01–0034	10/12/00	01/10/01	CBI	(G) Component of coating with open use	(G) Modified amino triazine
P–01–0035	10/12/00	01/10/01	Arch Chemicals, Inc.	(S) Photo-acid generator f/chemically amplified resist systems	(G) Perfluorooctanesulfonate
P–01–0036	10/12/00	01/10/01	CBI	(G) This component will be a minor wear inhibitor ingredient formulated into selected natural gas and railroad lubricating oil concentrates for delivery to commercial and industrial finished oil blenders and end cutomers for these products. in actual service, this component will be degraded, as intended, to afford enhance protection from lead bearing corrosion in these types of internal combution engines	(G) Polyalkenyl succinimide, ammonium salt

TABLE I. 38 PREMANUFACTURE NOTICES RECEIVED FROM: 10/09/00 TO 10/20/00—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–01–0037	10/12/00	01/10/01	Cytec Industries Inc.	(S) Anti-scalant in oil field and oil refinery operations	(G) Polymeric scale inhibitor
P–01–0038	10/13/00	01/11/01	Dow Corning Corporation	(S) Siloxane endblocker	(G) Alkyl phenyl siloxane
P–01–0039	10/13/00	01/11/01	Dow Corning Corporation	(S) Hydraulic/heat transfer fluid	(G) Dimethyl, methyl phenyl siloxane
P–01–0040	10/13/00	01/11/01	CBI	(G) Open, dispersive use; component of asphalt and concrete emulsions	(G) Salt of polymerized rosin
P–01–0041	10/16/00	01/14/01	CBI	(G) Open, non-dispersive use	(G) Hydroxy functional acrylic polymer
P–01–0042	10/16/00	01/14/01	Cognis Corporation	(G) Textile sizing resin	(G) Polyether epoxy polyurethane
P–01–0043	10/13/00	01/11/01	CBI	(S) Specialty polymer	(G) Silyl substituted bicyclic olefin
P–01–0044	10/16/00	01/14/01	CBI	(G) Component of coating with open use	(G) Cationic epoxy dispersion
P–01–0045	10/16/00	01/14/01	CIBA Specialty Chemicals Corporation	(S) Colorant in polymers	(G) Diketo-pyrrolopyrrol pigment derivative
P–01–0046	10/13/00	01/11/01	CBI	(G) Lubricant additive	(G) Modified alkyl ester
P–01–0047	10/13/00	01/11/01	CBI	(G) Lubricant additive	(G) Modified alkyl ester
P–01–0048	10/13/00	01/11/01	CBI	(G) Lubricant additive	(G) Modified alkyl ester
P–01–0049	10/13/00	01/11/01	CBI	(G) Lubricant additive	(G) Modified alkyl ester
P–01–0050	10/13/00	01/11/01	CBI	(G) Lubricant additive	(G) Modified alkyl ester
P–01–0051	10/13/00	01/11/01	CBI	(G) Lubricant additive	(G) Modified alkyl ester
P–01–0052	10/18/00	01/16/01	Warner-Jenkinson Co., Inc.	(S) Technical dye	(S) 1h-pyrazole-3-carboxylic acid, 4,5-dihydro-5-oxo-1-(4-sulfophenyl)-4-[(4-sulfophenyl)azo]-, sodium salt, compd. with 2-aminoethanol
P–01–0053	10/18/00	01/16/01	CBI	(G) Dispersive use	(G) Poly carboxylic acid, sodium salt
P–01–0054	10/18/00	01/16/01	CBI	(G) Dispersive use	(G) Polycarboxylate
P–01–0055	10/18/00	01/16/01	CBI	(G) Dispersive use	(G) Polycarboxylate
P–01–0056	10/18/00	01/16/01	CBI	(G) Dispersive use	(G) Polycarboxylate, sodium salt
P–01–0057	10/18/00	01/16/01	CBI	(G) Dispersive use	(G) Polycarboxylate, sodium salt
P–01–0058	10/19/00	01/17/01	BASF Corporation	(S) Process aid for leather finishing	(G) Counter ions of alkenes, hydroformylation products, distn. residues
P–01–0059	10/20/00	01/18/01	CBI	(G) Plastics additive	(S) Fatty acids, c8-10, esters with 3,3'-oxybis[1,2-propanediol]

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received:

TABLE II. 1 TEST MARKETING EXEMPTION NOTICES RECEIVED FROM: 10/09/00 TO 10/20/00

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–01–0001	10/13/00	11/27/00	CBI	(G) Component of coating with open use	(G) Urethane acrylate

In table III, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

TABLE III. 30 NOTICES OF COMMENCEMENT FROM: 10/09/00 TO 10/20/00

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0123	10/10/00	09/29/00	(G) Amino alkane
P–00–0190	10/16/00	09/27/00	(G) Amine functional acrylic polymer salted with an organic acid
P–00–0349	10/10/00	09/20/00	(G) Benzoic acid, 3,5-diamino-2,4-bis[[4-[[2-(sulfooxy)ethyl]sulfonyl]azo]-6-[[2-sulfo-4-[substituted]phenyl]azo]-, sodium salt
P–00–0452	10/11/00	09/14/00	(S) 3h-indol-3-one, 5-bromo-2-(5-bromo-1,3-dihydro-3-oxo-2h-indol-2-ylidene)-1,2-dihydro-
P–00–0545	10/17/00	10/14/00	(G) Piperidinyl derivative
P–00–0680	10/13/00	10/08/00	(G) Fatty acids, reaction products
P–00–0710	10/19/00	10/02/00	(G) Benzenesulfonic acid, 2,2′-(9,10-dihydro-5,8-dihydroxy-9,10-dioxo-1,4-anthracenediyl) (substituted)-,disodium salt

TABLE III. 30 NOTICES OF COMMENCEMENT FROM: 10/09/00 TO 10/20/00—Continued

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0711	10/19/00	10/02/00	(G) Benzenesulfonic acid, 2,2′-(9,10-dihydro-5,8-dihydroxy-9,10-dioxo-1,4-anthracenediyl) (substituted)-,disodium salt
P–00–0712	10/19/00	10/02/00	(G) Benzenesulfonic acid, 2,2′-(9,10-dihydro-5,8-dihydroxy-9,10-dioxo-1,4-anthracenediyl) (substituted)-,disodium salt
P–00–0750	10/10/00	09/27/00	(G) Reaction product of: 1,2 ethane diamine, aliphatic diisocyanate and polyether polyols
P–00–0763	10/20/00	10/04/00	(G) Polyester modified polydimethylsiloxane
P–00–0792	10/13/00	10/06/00	(G) Silicone copolymer
P–00–0814	10/16/00	10/03/00	(G) Isocyanate terminated urethane pre-polymer
P–00–0816	10/20/00	09/20/00	(G) Alkyl aminosulfonylcarboxylate
P–00–0836	10/10/00	09/12/00	(G) Modified copolymer of acrylic esters and styrene
P–00–0846	10/11/00	09/20/00	(G) Polyester acrylate
P–00–42	10/17/00	09/23/00	(G) Alkylated naphthylamine
P–00–48	10/10/00	09/24/00	(G) Coconut fatty acid polyester
P–00–52	10/20/00	10/09/00	(G) Polyester polyurethane prepolymer
P–00–58	10/17/00	09/22/00	(G) 1-propanethiol, 3-(trisubstituted)-,hydrolysis products with dichlorodimethylsilane and silica
P–00–59	10/17/00	09/22/00	(G) 1-propanethiol, 3-(trisubstituted)-,hydrolysis products with dichlorodimethylsilane and silica
P–00–60	10/16/00	10/06/00	(G) Polyakyleneoxy aliphatic urethane
P–00–1003	10/19/00	10/12/00	(G) Aliphatic urethane
P–95–1565	10/13/00	09/20/00	(G) Amine functional epoxy resin salted with an organic acid
P–98–0367	10/10/00	07/29/99	(G) Organic acid amine salt
P–98–0870	10/11/00	09/15/00	(G) Sodium alcoholate
P–99–0457	10/17/00	09/17/00	(G) Polymer of styrene and mixed acrylates
P–99–0603	10/13/00	01/20/00	(G) Acrylic polymer resin
P–99–0604	10/13/00	09/25/99	(G) Oil-free alkyd
P–99–0840	10/19/00	09/25/00	(G) Hexamethylene diisocyanate, polymer with alkanepolyols, dimethyl terephthalate, benzenepolycarboxylic acid and alkanepolycarboxylic acid

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: November 3, 2000.

Deborah A. Williams,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 00–28718 Filed 11–08–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6898–6]

Clean Water Act Class II: Proposed Administrative Penalty Assessments and Opportunities to Comment Regarding Mr. Richard Westra, H&R Westra Dairy and Mr. Bernard Teunissen, Beranna Dairy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Assessments of Clean Water Act Class II Administrative Penalties and opportunity to comment.

SUMMARY: EPA is providing notice of proposed administrative penalties for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed penalties.

EPA is authorized under section 309(g) of the Act, 33 U.S.C. 1319(g), to assess a civil penalty after providing the person subject to the penalty notice of the proposed penalty and the opportunity for a hearing, and after providing interested persons notice of the proposed penalty and a reasonable opportunity to comment on its issuance. Under section 309(g), any person who has violated the conditions of a National Pollutant Discharge Elimination System permit may be assessed a penalty in a ''Class II'' administrative penalty proceeding. Class II proceedings under section 309(g) are conducted in accordance with consolidated rules of practice governing the administrative assessment of civil penalties, 40 CFR part 22.

EPA is providing notice of the following Class II penalty proceedings:

In the Matter of Richard Westra, Docket No. CWA–9–2000–0011; Complainant, Alexis Strauss, Director, Water Division, U.S. EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105; Respondent, Mr. Richard Westra, H&R Westra Dairy, 7851 Bickmore Avenue, Chino, CA 91710; filed September 28, 2000; seeking a penalty of up to $137,500 for various discharges from H&R Westra Dairy to a natural drainage channel which flows to the Prado Flood Control Basin and the Santa Ana River, in violation of ''General Waste Discharge Requirements for Concentrated Animal Feeding Operations, including Dairies, within the Santa Ana Region,'' NPDES No. CAG018001, and for various violations of conditions of that permit related to construction and maintenance of containment structures, inundation protection, surface runoff, drainage diversion, and other operational requirements.

In the Matter of Bernard Teunissen, Docket No. CWA–9–2000–0012; Complainant, Alexis Strauss, Director, Water Division, U.S. EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105; Respondent, Mr. Bernard Teunissen, Beranna Dairy, 16015 Mountain Avenue, Chino, CA 91710; filed September 29, 2000; seeking a penalty of up to $137,500 for various discharges from Beranna Dairy to Cypress Creek Channel, which flows to Chino Creek, the Prado Flood Control Basin and the Santa Ana River, in violation of ''General Waste Discharge Requirements for Concentrated Animal Feeding Operations, including Dairies, within the Santa Ana Region,'' NPDES No. CAG018001, and for various violations of conditions of that permit related to construction and maintenance

of containment structures, surface runoff, drainage diversion, and other operational requirements.

Procedures by which the public may comment on a proposed Class II penalty or participate in a Class II penalty proceeding are set forth in the consolidated rules. A commenter may present written comments for the record at any time prior to the close of the record or by such date as the presiding officer may set.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of the consolidated rules, review the complaint or other documents filed in the proceedings, or comment or participate in the proceedings, should contact Danielle Carr, Regional Hearing Clerk, U.S. EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105, (415) 744–1391. Documents filed as part of the public record in the proceedings are available for inspection during business hours at the office of the Regional Hearing Clerk.

Dated: October 27, 2000.

Alexis Strauss,

Director, Water Division.

[FR Doc. 00–28711 Filed 11–8–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; FCC 00–359]

Federal-State Joint Board on Universal Service; Petition for Forbearance by Operator Communications, Inc. d/b/a Oncor Communications, Inc.

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission extends until February 20, 2001 the date on which the petition requesting forbearance filed on November 22, 1999 by Operator Communications, Inc., d/b/a Oncor Communications, Inc. (''Oncor''), shall be deemed granted in the absence of a Commission decision that the petition fails to meet the standard for forbearance under the Act.

DATES: Effective December 11, 2000.

FOR FURTHER INFORMATION CONTACT: Praveen Goyal, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document in CC Docket No. 96–45 released on October 12, 2000. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC, 20554.

I. Introduction

1. In this Order, pursuant to section 10(c) of the Communications Act of 1934, as amended (Act), we extend until February 20, 2001 the date on which the petition requesting forbearance filed on November 22, 1999 by Operator Communications, Inc., d/b/a Oncor Communications, Inc. (''Oncor''), shall be deemed granted in the absence of a Commission decision that the petition fails to meet the standard for forbearance under section 10(a) of the Act.

II. Oncor Petition for Forbearance

2. On November 22, 1999, Operator Communications, Inc., d/b/a Oncor Communications, Inc. (Oncor), filed a petition for forbearance from enforcement of §§ 54.709 and 54.711 of the Commission's rules (not published in the **Federal Register**). Oncor requests that, for its end-user telecommunications revenues subject to universal service contributions for the years 1998, 1999, and 2000, Oncor be assessed universal service contributions based on its current revenues for those years rather than revenues from the prior year.

3. Section 10(c) of the Communications Act states that a petition for forbearance shall be deemed granted if the Commission does not deny the petition for failure to meet the requirements for forbearance under section 10(a) within one year after the Commission receives it, unless the one-year period is extended by the Commission. The Commission may extend the initial one-year period by an additional 90 days if the Commission finds that an extension is necessary to meet the requirements of section 10(a).

4. Oncor's petition raises significant questions regarding whether forbearance from the enforcement of §§ 54.709 and 54.711 of the Commission's rules meets the statutory requirements set forth in section 10(a). We find that a 90-day extension is warranted under section 10.

III. Ordering Clauses

5. Pursuant to section 10 of the Communications Act of 1934, as amended, 47 U.S.C. 160, that the date on which the above-captioned request for forbearance shall be deemed granted in the absence of a Commission denial of the request for failure to meet the statutory standards for forbearance, is extended to February 20, 2001.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–28727 Filed 11–8–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 24, 2000.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. William E. Coffee, Billings, Montana, individually and as trustee for the following trusts: Coffee Family Trust I, Coffee Family Trust II, Nefsy Family Trust I, Nefsy Family Trust II, and Nefsy Family Trust III, and the following trusts acting in concert: Coffee Family Trust I, Coffee Family Trust II, Nefsy Family Trust I, and Nefsy Family Trust III, all of Billings, Montana, to acquire voting shares of Stockman Financial Corporation, Miles City, Montana, and thereby indirectly acquire voting shares of Stockman Bank of Montana, Miles City, Montana.

Board of Governors of the Federal Reserve System, November 3, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–28765 Filed 11–8–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank

Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 27, 2000.

A. **Federal Reserve Bank of Minneapolis** (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Douglas Loren Jilek, Lester Prairie, Minnesota, to acquire additional voting shares of Prairie Bancshares, Inc., Lester Prairie, Minnesota, and thereby indirectly acquire additional voting shares of First Community Bank Lester Prairie, Lester Prairie, Minnesota, and First Community Bank Silver Lake, Silver Lake, Minnesota.

Board of Governors of the Federal Reserve System, November 6, 2000

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–28825 Filed 11–8–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 4, 2000.

A. Federal Reserve Bank of Chicago Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Lenawee Bancorp, Inc., Adrian, Michigan; to acquire 100 percent of the voting shares of Bank of Washtenaw (In organization), Saline, Michigan.

2. Chemical Financial Corporation, Midland, Michigan; to merge with Shoreline Financial Corporation, Benton Harbor, Michigan, and thereby indirectly acquire Shoreline Bank, Benton Harbor, Michigan.

Board of Governors of the Federal Reserve System, November 3, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–28764 Filed 11–8–00; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Office of Communications/Department of Defense; Construction Cancellation of Stocked Standard Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Because of low usage the 4-part continuous, carbon interleave set construction of the following Standard Form is cancelled: SF 153, COMSEC Material Report (NSN 7540–00–935–5861).

The 4-part continuous feed, chemical transfer paper set version (identified by NSN 7540–00–935–5860) of this form is still available from FSS.

DATES: Effective November 9, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

Dated: October 17, 2000.

Barbara M. Williams,

Deputy, Standard and Optional Forms Management Officer.

[FR Doc. 00–28724 Filed 11–8–00; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Runaway and Homeless Youth Program Regulations.

OMB No.: New Collection.

Description: The Runaway and Homeless Youth program is administered by the Family and Youth Services Bureau (FYSB). The authorizing legislation for the Runaway and Homeless Youth (RHY) Program, Public Law 106–71 (42 U.S.C. 5701), Section 311, set forth provisions for awarding grants through a competitive process to public and nonprofit private entities (and combinations of such entities) to establish and operate local programs to provide services for runaway and homeless youth and their families. For the competitive grant making process, eligible entities are required to describe their goals, plans (scope of activities), capacities and other qualifications for receiving Federal funding to operate the type of youth services programs authorized under the RHY Act. The information is requested annually through the RHY Program Announcement. The program regulations implementing provisions of the RHY Act limit grants project period to three years (a limit not specified in the statue). The final rule would change the project periods from a maximum of three years to five years. The regulation change is technical in nature and will allow FYSB the flexibility and discretion to award some grants for five-year periods, instead of three years. The regulatory change will not increase the burden for any entities. The change will only affect the frequency of application submission.

Respondents: Community-based Organizations, States, and Tribes.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Grant application	500	1	20	10,000
Estimated total annual burden hours				10,000

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: October 26, 2000.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 00–27969 Filed 11–8–00; 8:45 am]

BILLING CODE 41841–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Uniform Project Description for a Discretionary Grant Application.

OMB No.: 0970–0139.

Description

Respondents: Applicants for ACF Discretionary Grant Programs.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
UPD	2,838	1	8	22,838
Estimated Total Annual Burden Hours				22,838

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: October 26, 2000.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 00–28052 Filed 11–8–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Head Start Family and Child Experiences Survey (FACES)

OMB No.: Revision of a currently approved collection (OMB No. 0970–0151)

Description: The Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF) of the Department of Health and Human Services (DHHS) is requesting comments on plans to extend the Head Start Family and Child Experiences Survey (FACES). This study is being conducted under contract with Westat, Inc. (with Ellsworth Associates and the CDM Group as their subcontractors) (#105–96–1912) to collect information on Head Start performance measures. This revision is intended to extend the current design to a national probability sample of 43 additional Head Start programs in order to ascertain what progress has been made since 1997 in meeting Head Start program performance goals.

FACES currently involves seven phases of data collection. The first phase was a Spring 1997 Field test in which approximately 2400 parents and children were studied in a nationally stratified random sample of 40 Head Start programs. The second and third phases occurred in Fall 1997 (Wave 1) and Spring 1998 (Wave 2) when data were collected on a sample of 3200 children and families in the same 40 programs. Spring 1998 data collection included assessments of both Head Start children completing kindergarten (kindergarten field test) as well as interviews with their parents and ratings by their kindergarten teachers. In the fourth and fifth phases, follow-up continued for a second program year, plus a kindergarten follow-up. The sixth and seventh waves of data collection involve data collection in spring of the first-grade year for both cohorts of children, those completing kindergarten in spring 1999, and those completing kindergarten in spring 2000. The current plan is to extend data collection to a new cohort of 2825 children and

families in a new sample of 43 Head Start programs.

This schedule of data collection is necessitated by the mandates of the Government Performance and Results Act (GPRA) of 1993 (Pub. L. 103–62), which requires that the Head Start Bureau move expeditiously toward development and testing of Head Start Performance Measures, and by the 1994 reauthorization of Head Start (Head Start Act, as amended, May 18, 1994, Section 649 (d)), which requires periodic assessments of Head Start's quality and effectiveness.

Respondents: Federal Government, Individuals or Households, and Not-for-profit institutions.

ANNUAL BURDEN ESTIMATES

[Estimated Response Burden for Respondents to the Head Start Family and Child Experiences Survey (FACES 2000)—Fall 2000, Spring 2001, Spring 2002, Spring 2003]

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Year 1 (2000):				
Head Start Parents	2825	1	1.00	2825
Head Start Children	2825	1	0.66	1865
Head Start Teachers (child ratings)	205	14	0.25	718
Center Directors	180	1	1.00	180
Education Coordinators	180	1	0.75	135
Classroom Teachers	205	1	1.00	205
Year 2 (2001):				
Head Start Parents	2400	1	0.75	1800
Head Start Children	2400	1	0.66	1584
Head Start Teachers (child ratings)	205	12	0.25	615
Family Services Coordinators	180	1	0.75	135
Year 3 (2002):				
Head Start Parents	850	1	0.75	638
Head Start Children	850	1	0.66	561
Head Start Teachers (child ratings)	71	12	0.25	213
Kindergarten Parents	1122	1	0.75	842
Kindergarten Children	1122	1	0.75	842
Kindergarten Teachers	1122	1	0.50	561
Year 4 (2003):				
Kindergarten Parents	680	1	0.75	510
Kindergarten Children	680	1	0.75	510
Kindergarten Teachers	680	1	0.50	340
Annualized Totals:				
Year 1				5928
Year 2				4134
Year 3				3657
Year 4				1360
Estimated Average Annual Burden Hours:				3780

Note: The 3780 Estimated Average Annual Burden Hours is based on an average of 2000, 2001, 2002, and 2003 estimated burden hours.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: November 3, 2000.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 00–28801 Filed 11–8–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: National Directory of New Hires.

OMB No.: 0970–0166.

Description: Public Law 104–193, the ''Personal Responsibility and Work Opportunity Reconciliation Act of 1996,'' requires the Office of Child Support Enforcement (OCSE) to operate a National Directory of New Hires (NDNH) to improve the ability of State child support agencies to locate noncustodial parents and collect child support across State lines. The law requires States to periodically transmit new hire data received from employers to the NDNH, and to transmit quarterly wage and unemployment compensation claims data to the NDNH on quarterly basis. States transmit all data to the NDNH electrically.

Respondents: Employers, State child support agencies, State Employment Security agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
New Hire: Employers Reporting Manually	5,166,000	3.484	.0417 hours (2.5 minutes)	750,531
New Hire: Employers Reporting Electronically	1,134,000	37.037	.00028 hours (1 second)	11,760
New Hire: States	54	83.333	266.669 hours	1,200,001
Quarterly Wage & Unemployment Compensation	54	4	.033 hours (2 minutes)	7.13
Multistate Employers' Notification Form	2052	1	.050 hours (3 minutes)	102.6
Estimated Total Annual Burden Hours:				1,962,402

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: November 3, 2000.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 00–28802 Filed 11–8–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACF/ACYF/HS FY 2001–03]

Fiscal Year 2001 Discretionary Announcement for University-Head Start Partnerships and Graduate Student Head Start Research Grants: Availability of Funds and Request for Applications

AGENCY: Administration on Children, Youth, and Families, ACF, DHHS.

ACTION: Notice.

Statutory Authority: The Head Start Act, as amended 42 U.S.C. 9801 *et seq.* CFDA: 93.600.

SUMMARY: The Administration for Children and Families, Administration on Children, Youth, and Families, Head Start Bureau announces the availability of funds for two Priority Areas; University-Head Start Partnerships (1.01) and Graduate Student Head Start Research Grants (1.02). These priority areas will support research activities in the areas of infant and toddler development within the cultural context, school readiness, mental health and field-initiated research which will increase our knowledge of low-income children's development for the purpose of improving services or have significant policy implications.

DATES: The closing date for receipt of applications is 5:00 P.M. EDT February 7, 2001.

Note: Applications should be submitted to the ACYF Operations Center at: 1815 N. Fort Myer Drive, Suite 300, Arlington, Virginia 22209. However, prior to preparing and submitting an application, in order to satisfactorily compete under this announcement it will be necessary for potential applicants to read the full announcement which is available through the addresses listed below.

ADDRESSES: Applications, including all necessary forms can be downloaded from the Head Start web site at *www.acf.dhhs.gov/programs/hsb.* The web site also contains a listing of all Head Start and Early Head Start programs. Hard copies of the application may be obtained by writing or calling the Operations Center or sending an email to *hsr@lcgnet.com.*

FOR FURTHER INFORMATION CONTACT: ACYF Operations Center at: 1815 N. Fort Myer Drive, Suite 300, Arlington, Virginia 22209 or (1–800) 351–2293.

SUPPLEMENTARY INFORMATION:

Priority Areas

Priority Area 1.01 University-Head Start Partnerships

Eligible Applicants: Universities and four-year colleges on behalf of a faculty member who holds a doctorate or equivalent in their respective field.

Project Duration: The announcement for Priority Area 1.01 is soliciting applications for project periods of three years, with the first year as a planning grant which will be used to pilot instruments or interventions. Awards, on a competitive basis, will be for the first one-year planning budget period. Applications for continuation funds under these awards beyond the first-year budget period, but within the established project period, will be entertained in subsequent years on a non-competitive basis, subject to availability of funds, satisfactory progress of the grantee, and a determination that continued funding would be in the best interests of the Government.

Federal Share of Project Costs: The maximum Federal share is $75,000 for the first-year budget period. The Federal share for the subsequent years is approximately $150,000 for each year of the project period. The Federal Share is inclusive of indirect costs.

Matching Requirements: There are no matching requirements.

Anticipated Number of Projects To Be Funded: It is anticipated that 4–8 projects will be funded.

Priority Area 1.02 Master's-Level and Doctoral Head Start Research Grants

Eligible Applicants: Institutions of higher education on behalf of graduate

students at both the Master's and Doctorate levels. Doctoral students must have completed their Master's degree or equivalent in that field prior to applying for this grant or by the time grants are awarded, and have sent formal notification of having been granted the degree to ACYF. To be eligible to administer the grant on behalf of the student, the institution must be fully accredited by one of the regional accrediting commissions recognized by the Department of Education and the Council on Post-Secondary Accreditation. In addition, the specific graduate student on whose behalf the application is made must be identified.

Project Duration: The announcement for Priority Area 1.02 is soliciting applications for project periods up to two years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for two years. It should be noted, that if the graduate student, on whose behalf the university is applying, expects to receive a degree by the end of the first year budget period, the applicant should request a one-year project period only. A second year budget period will not be granted if the student has graduated by the end of the first year. If the student either graduates or leaves the program during the project or budget period, the grant cannot be transferred to another student and must be surrendered to the Government. Applications for continuation grants will be entertained in the subsequent year on a non-competitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

Federal Share of Project Costs: The maximum Federal share shall range between $10,000–$20,000 for the first-year budget period or a maximum of $40,000 for a two-year project period.

Matching Requirements: There are no matching requirements.

Anticipated Number of Projects To Be Funded: It is anticipated that between 5 and 10 projects will be funded with an unspecified mixture of master's-level and doctoral level applicants. No university will be funded for more than one candidate, unless there are no other approved applications. Applications from the master's-level students will be evaluated separately from the applications from doctoral-level students.

Criteria for Priority Areas 1.01 and 1.02

Reviewers will consider the following factors when assigning points.

1. *Results or Benefits Expected:* 25 points.

- The research questions are clearly stated.
- The extent to which the questions are of importance and relevance for low-income children's development and welfare.
- The extent to which the research study makes a significant contribution to the knowledge base.
- The extent to which the literature review is current and comprehensive and supports the need for the study, the questions to be addressed or the hypotheses to be tested.
- The extent to which the questions that will be addressed or the hypotheses that will be tested are sufficient for meeting the stated objectives.

2. *Approach:* 40 points.

- The extent to which the research design is appropriate and sufficient for addressing the questions of the study.
- The extent to which child outcomes are the major focus of the study.
- The extent to which the measures are direct measures of child outcomes.
- The extent to which the planned research specifies the measures to be used and the analyses to be conducted.
- The extent to which the planned measures are appropriate and sufficient for the questions of the study.
- The extent to which the planned measures and analyses both reflect knowledge and use of state-of-the-art measures and analytic techniques and advance the state-of-the-art.
- The extent to which the analytic techniques are appropriate for the question under consideration.
- The extent to which the proposed sample size is sufficient for the study.
- The scope of the project is reasonable for the funds available for these grants.
- The extent to which the planned approach reflects sufficient input from and partnership with the Head Start or Early Head Start program.

3. *Staff and Position Data:* 35 points.

- The extent to which the principal investigator (or for 1.02, the graduate student) and other key research staff possess the research expertise necessary to conduct the study as demonstrated in the application and information contained in their vitae.
- For Priority Area 1.01 the principal investigator(s) has earned a doctorate or equivalent in the relevant field and has first or second author publications in major research journals.
- The extent to which the proposed staff reflect an understanding of and sensitivity to the issues of working in a community setting and in partnership with Head Start/Early Head Start program staff and parents.
- The adequacy of the time devoted to this project by the principal investigator and other key staff in order to ensure a high level of professional input and attention. For graduate students, the adequacy of the supervision provided by the graduate student's mentor.

Required Notification of the Single Point of Contact

This program is covered under Executive Order 12372, Intergovernmental Review of Federal Programs, and 45 CFR part 100, Intergovernmental Review of Department of Health and Human Services Program and Activities. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, and American Samoa have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-three jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

When comments are submitted directly to ACF, they should be addressed to: William Wilson, Head Start Bureau, 330 C Street SW., Washington, DC 20447. Attn: Head-Start University Partnerships or Graduate Student Head Start Research. A list of the Single Points of Contact for each State and Territory can be found on the web site. *http://www.dhhs.gov/progorg/grantsnet/laws-reg/spoq0695.htm.*

Dated: November 3, 2000.

James A. Harrell,

Deputy Commissioner, Administration on Children, Youth, and Families.

[FR Doc. 00–28800 Filed 11–8–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Planning, Research and Evaluation; Grant to the National Campaign to Prevent Teen Pregnancy

AGENCY: Office of Planning, Research and Evaluation, ACF, DHHS.

ACTION: Award announcement.

SUMMARY: Notice is hereby given that a noncompetitive grant award is being made to the National Campaign to Prevent Teen Pregnancy to develop a fifty-state survey of teen pregnancy prevention. This survey will also include three to four case studies of individual state efforts.

This 17-month project is being funded noncompetitively, because it is expected to provide valuable information useful to this Department and other practitioners regarding progress and state/community efforts to prevent teen pregnancy. The National Campaign to Prevent Teen Pregnancy is uniquely qualified to conduct the study because of its considerable experience and access to resources. The total cost of the project is $150,496.

FOR FURTHER INFORMATION CONTACT: Nancye Campbell, Office of Planning, Research and Evaluation, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447, Phone: 202–401–5760.

Dated: November 2, 2000.

Howard Rolston,

Director, Office of Planning, Research and Evaluation.

[FR Doc. 00–28818 Filed 11–8–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of Availability of a Draft Programmatic Environmental Assessment

AGENCY: Administration on Children, Youth, and Families (ACYF), ACF, DHHS.

ACTION: Notice.

SUMMARY: The Administration for Children and Families has prepared a draft Programmatic Environmental Assessment in accordance with the National Environmental Policy Act of 1969, as amended, and the Revised General Administration Manual, HHS Part 30, Environmental Protection. The document assesses the environmental impacts of activities undertaken by the Head Start and Early Head Start grantees when purchasing, renovating or constructing child care facilities.

The Department of Health and Human Services has completed a review of the draft Programmatic Environmental Assessment. A determination as to the finding of significant or non-significant impacts on the environment will not be made until at least 30 days from the publication of this notice.

DATES: Written comments on the draft Programmatic Environmental Assessment should be received on or before December 11, 2001.

ADDRESSES: Persons wishing to review the draft Programmatic Environmental Assessment may obtain a copy by writing to: Head Start PEA Team, The Mangi Environmental Group, 701 West Broad Street, Suite 205, Falls Church, Virginia 22046. Comments concerning the draft Programmatic Environmental Assessment should be submitted to the Programmatic Environmental Team at the address above.

FOR FURTHER INFORMATION CONTACT: Douglas Klafehn, Acting Associate Commissioner, Head Start Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, D.C. 20013; (202) 205–8672.

SUPPLEMENTARY INFORMATION: Head Start and Early Head Start are authorized under the Head Start Act (42 U.S.C. 9801 *et seq.*). It is a national program providing comprehensive developmental services to low-income preschool children, primarily age three to age of compulsory school attendance, and their families. To help enrolled children achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and 500 Head Start program grantees.

To improve the availability and quality of child care centers, the Head Start Act was amended in 1992 and again in 1994 authorizing the use of federal financial assistance to make payments for capital expenditures, such as expenditures for the purchase, construction and major renovations of Head Start and Early Head Start facilities. This authority is found in Section 644 (f) and (g) of the Head Start Act.

In conformance with the Revised General Administration Manual, HHS Part 30, Environmental Protection, the Administration for Children and Families has conducted a Programmatic Environmental Assessment to determine if this federally funded activity would have a significant impact on the environment.

Dated: November 1, 2000.

Olivia A. Golden,

Assistant Secretary for Children and Families.

[FR Doc. 00–28799 Filed 11–8–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACYF–PA–CCB 2001–01]

Native Hawaiian and Nonprofit American Indian Organization; Child Care Grants

AGENCY: Administration on Children and Families (ACYF), Administration for Children and Families, (ACF).

ACTION: Announcement of availability of competitive financial assistance for Native Hawaiian and Nonprofit American Indian Organization Child Care Grants.

SUMMARY: The purpose of this program announcement is to announce the availability of fiscal year 2001 Discretionary Funds, authorized under the Child Care and Development Block Grant (CCDBG) Act (the Act), as amended, for child care grants to:

(1) A Native Hawaiian organization; and

(2) A private nonprofit organization established for the purpose of serving youth who are Indians or Native Hawaiians.

DATES: The closing date for submission of applications is January 8, 2001.

Mailing and Delivery Instructions: Mailed applications and applications hand delivered by applicants, applicant couriers, overnight/express mail couriers or any other method of hand delivery shall be considered as meeting an announced deadline if they are received on or before the deadline, at the: ACYF Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, VA 22209, Telephone: 1–800–351–2293.

Applications may be hand delivered to the above address between the hours

of 8:00 a.m. and 4:30 p.m. (EDT), Monday through Friday (excluding Federal Holidays).

Applicants are responsible for mailing and delivering applications well in advance of deadlines to ensure that the applications are received on time. Applications received after 4:30 p.m. (EDT) on the deadline date will be classified as late. Postmarks and other similar documents do not establish receipt of an application.

ACF will not accept applications delivered by fax, regardless of date or time of submission and receipt.

Late applications: Applications which do not meet the criteria stated above and are not received by the deadline date and time are considered late applications. The Administration for Children and Families (ACF) will notify each late applicant that its application will not be considered in the current competition.

Extension of deadline: ACF may extend an application deadline for applicants affected by acts of God such as floods and hurricanes, or when there is widespread disruption of the mails. A determination to waive or extend deadline requirements rests with the Chief Grants Management Officer.

Notice of Intent to Submit Application: If you intend to submit an application, please contact ACYF's Operations Center at 1–800–351–2293 with the following information: the number and title of this announcement; your organization's name and address; and your contact person's name, phone number, fax number, and e-mail address. The information will be used to determine the number of expert reviewers needed to evaluate applications and to update the mailing list for program announcements.

FOR FURTHER INFORMATION CONTACT: Ginny Gorman, Administration for Children and Families, Child Care Bureau, Room 2046, Mary E. Switzer Building, 330 C Street, SW., Washington, DC 20447, Phone: 202–401–7260, Fax: 202–690–5600, or E-mail: ggorman@acf.dhhs.gov

SUPPLEMENTARY INFORMATION: The ACF Uniform Discretionary Grant Application Form covering all ACF announcements, contained in the Application Kit, and this Supplementary Information section contain all the forms and instructions needed to apply for a grant under this announcement. No additional application materials are needed.

The Supplementary Information section consists of seven parts. Part I provides general information about funding requirements, and application procedures for child care grants under this program announcement. Part II provides background information on ACYF, the Child Care Bureau, and funding to Indian Tribes and tribal organizations under the Child Care and Development Fund (CCDF), and CCDF definitions used in this announcement. Part III describes child care goals and priorities related to this announcement. Part IV provides instructions for the Uniform Project Description. Part V describes the evaluation criteria and selection process. Part VI describes the application process. Part VII provides information on the content of the application and submission instructions. The contents are outlined below:

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Part I. General Information

A. Purpose

The purpose of this program announcement is to provide funding for two child care programs: one serving Native Hawaiian youths; and one serving Indian and/or Native Hawaiian youths.

B. Citations

1. Sponsorship

Grants being awarded under this announcement are sponsored by the Child Care Bureau (the Bureau) of the Administration on Children, Youth and Families (ACYF) in the Administration for Children and Families (ACF), U.S. Department of Health and Human Services (DHHS). The Bureau will manage the projects.

2. Funding Authority

Funding is being provided by ACF under Sec. 658B of the Child Care and Development Block Grant Act, as amended (42 U.S.C. 9858).

3. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number is 93.575.

C. Number of Awards

Two projects will be funded in fiscal year 2001 (beginning October 1, 2000), subject to the availability of funds and results of the evaluation process.

D. Project Duration

The total project period will be 36 months.

E. Funding Levels and Budget Periods

Initial awards will be for a one-year budget period. Individual projects will receive between $500,000 and $1,000,000 for the first budget period of 12 months, with a possibility of between $500,000 and $1,000,000 per year in continuation funding to be awarded in each of fiscal years 2002 and 2003. The estimated total Federal funding for a three-year project is between $1,500,000 and $3,000,000.

Applications for continuation of grants funded under this announcement will be entertained in subsequent years on a non-competitive basis. The award of continuation funding beyond each one-year budget period (but within the three-year project period) will be subject to the availability of funds, satisfactory progress of the grantee, and a

determination that continued funding would be in the best interest of the government.

F. Non-Federal Share of Project Costs

While the applicant is not required to provide a match to receive funding under this program announcement, it is strongly encouraged to leverage funds from other sources for their project.

G. Eligibility

The following organizations are eligible to apply for funding under this program announcement:

A private nonprofit organization that serves the interests of Native Hawaiians and is recognized by the Governor of Hawaii for the purpose of planning, conducting, or administering programs (or parts of programs) for the benefit of Native Hawaiians; and

A private nonprofit organization established for the purpose of serving youth who are Indians or Native Hawaiians.

Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code *or* by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

At least 90 percent of the individuals serving on a non-profit applicant's board must fall into one or more of the following categories: (1) Must be a current or past member of the community to be served; (2) be a prospective participant in or beneficiary of the project to be funded; or (3) have a cultural relationship with the community to be served.

''Community'' is defined as a group with common interests and a common identify, such as an Indian Tribe, Alaska Native Village, or a group of Native Hawaiians living in a given geographic area, and all those residing or participating in a predominantly Native Hawaiian community.

If an Indian organization is already receiving Child Care and Development Fund (CCDF) funding, it is not eligible to apply for Discretionary Funds under this program announcement. Only one application will be accepted from each eligible applicant.

Part II. Background and Context

A. The Child Care Bureau

The Child Care Bureau was established in 1994 to provide leadership to efforts to enhance the quality, affordability, and supply of child care available for all families. The Child Care Bureau administers the Child Care and Development Fund (CCDF), a $3.5 billion child care program that includes funding for child care subsidies and activities to improve the quality and availability of child care. CCDF was created after amendments to ACF child care programs by Title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 consolidated four Federal child care funding streams including the Child Care and Development Block Grant, AFDC/JOBS Child Care, Transitional Child Care, and At-Risk Child Care.

The Bureau works closely with ACF Regions, States, Territories and Tribes to assist with, oversee, and document implementation of new policies and programs in support of State, local and private sector administration of child care services and systems. In addition, the Bureau collaborates extensively with other offices throughout the Federal government to promote integrated, family-focused services and coordinated child care delivery systems. In all of these activities, the Bureau seeks to enhance the quality, availability, and affordability of child care services, support children's healthy growth and development in safe child care environments, enhance parental choice and involvement in their children's care, and facilitate the linkage of child care with other community services.

B. Grants to Indian Tribes and Tribal Consortia

The CCDF is comprised of two funding sources for Tribes and tribal consortia:

Discretionary Funds—funding that is provided under the Child Care and Development Block Grant Act, as amended; and

Tribal Mandatory Funds—funding that is provided to eligible tribal organizations under Section 418 of the Social Security Act.

Currently, 257 Indian Tribes and tribal consortia receive CCDF funds. Through consortia arrangements, these grantees serve over 500 Federally recognized Indian Tribes and Alaska Native Villages. In FY 2000, Tribes and tribal organizations received approximately $71 million in CCDF funds.

A Tribe is eligible to receive CCDF funds if it is Federally recognized and the tribal population includes at least 50 children under 13 years of age (or such similar age, as determined by the Secretary from the best available data). A Tribe with fewer than 50 children under age 13 may participate in a consortium of eligible tribes.

In order to receive CCDF funds, eligible Tribes and tribal consortia develop a plan for child care services. The plan is an agreement between the Administration for Children and Families (ACF) and the Tribal agency responsible for administering the CCDF funds. The plan provides assurances that the funds will be administered in conformance with the Act, pertinent Federal regulations, and other applicable instructions or guidelines issued by ACF.

C. Grants to ''Other Organizations''

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) amended the Child Care and Development Block Grant Act (CCDBG), to add the following definition to the term ''tribal organization,'' to indicate other organizations that are potentially eligible for Discretionary Funding:

''Other organizations—Such term includes a Native Hawaiian Organization, as defined in section 4009(4) of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 and a private nonprofit organization established for the purpose of serving youth who are Indians or Native Hawaiians.''

Section 4009(4) of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 defines a Native Hawaiian Organization as:

''A private nonprofit organization that serves the interests of Native Hawaiians, and is recognized by the Governor of Hawaii for the purpose of planning, conducting, or administering programs (or parts of programs) for the benefit of Native Hawaiians.''

The applicant is eligible to apply only for Discretionary Funds under this announcement. Native Hawaiian organizations and private nonprofit organizations established for the purpose of serving youth who are Indians or Native Hawaiians are not eligible to apply for Tribal Mandatory Funds.

D. Definitions

This program announcement is based on the following definitions:

Categories of Care—center-based child care, group home child care, family child care and in home care.

Center-Based Child Care Provider—a provider licensed or otherwise authorized to provide child care services for fewer than 24 hours per day per child in a non-residential setting, unless care in excess of 24 hours is due to the nature of the parent(s)' work.

Child Care Certificate—a certificate (that may be a check, or other disbursement) that is issued by a grantee directly to a parent who may use such certificate only as payment for child care services or as a deposit for child care services if such a deposit is required of other children being cared for by the provider, pursuant to 45 CFR 98.30. Nothing in this part shall preclude the use of such certificate for sectarian child care services if freely chosen by the parent. For the purposes of this part, a child care certificate is assistance to the parent, not assistance to the provider.

Construction—the erection of a facility that does not currently exist.

Discretionary Funds—the funds authorized under section 658B of the Child Care and Development Block Grant Act. The Discretionary funds were formerly referred to as the Child Care and Development Block Grant.

Eligible Child Care Provider—(1) A center-based child care provider, a group home child care provider, a family child care provider, an in-home child care provider, or other provider of child care services for compensation that is licensed, regulated, or registered under applicable State or local law as described in 45 CFR 98.40; and satisfies State and local requirements, including those referred to in 45 CFR 98.41 applicable to the child care services it provides; or (2) a child care provider who is 18 years of age or older who provides child care services only to eligible children who are, by marriage, blood relationship, or court decree, the grandchild, great grandchild, sibling (if such provider lives in separate residence), niece, or nephew of such provider, and complies with any applicable requirements that govern child care provided by the relative involved.

Family Child Care Provider—one individual who provides child care services for fewer than 24 hours per day per child, as the sole caregiver, in a private residence other than the child's residence, unless care in excess of 24 hours is due to the nature of the parent(s)' work.

Group Home Child Care Provider—two or more individuals who provide child care services for fewer than 24 hours per day per child, in a private residence other than the child's residence, unless care in excess of 24 hours is due to the nature of the parent(s)' work.

Indian Tribe—any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. section 1601 *et seq.*) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

In-Home Child Care Provider—an individual who provides child care services in the child's own home.

Licensing or Regulatory Requirements—requirements necessary for a provider to legally provide child care services in a State or locality, including registration requirements established under State, local or Tribal law.

Other Tribal Organizations—such term includes a Native Hawaiian Organization, as defined in section 4009(4) of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 and a private nonprofit organization established for the purpose of serving youth who are Indians or Native Hawaiians.

Parent—a parent by blood, marriage or adoption and also means a legal guardian, or other person standing *in loco parentis.*

Provider—the entity providing child care services.

Sliding Fee Scale—a system of cost sharing by a family based on income and size of the family, in accordance with 45 CFR 98.42.

Tribal Mandatory Funds—the child care funds set aside at section 418(a)(4) of the Social Security Act. The funds consist of between one and two percent of the aggregate Mandatory and Matching child care funds reserved by the Secretary in each fiscal year for payments to Indian Tribes and Tribal organizations.

Types of Providers—the different classes of providers under each category of care. For the purposes of the CCDF, types of providers include non-profit providers, for-profit providers, sectarian providers and relatives who provide care.

Part III. Native Hawaiian and Nonprofit American Indian Organization Child Care Grants—Goals and Priorities

In designing a project under this announcement, the applicant should consider the following goals of the amended CCDBG Act, provided at 45 CFR 98.1(a):

1. Allow each State maximum flexibility in developing child care programs and policies that best suit the needs of children and parents within the State;
2. Promote parental choice to empower working parents to make their own decisions on the child care needs that best suits their family's needs;
3. Encourage States to provide consumer education information to help parents make informed choices about child care;
4. Assist States to provide child care to parents trying to achieve independence from public assistance; and
5. Assist States in implementing the health, safety, licensing and registration standards established in State regulations.

Grants awarded under this announcement are to increase the availability, affordability and quality of child care services by establishing child care programs in areas that have been previously underserved and/or have unmet needs.

Eligible applicants are reminded that under 45 CFR 98.80(d) of the CCDF Final Rule, Indian children continue to have dual eligibility to receive services funded by CCDF. Indian children and Native Hawaiian children will continue to be eligible for services provided under this announcement *and* from the State in which the applicant organization is located. Therefore, through the two grants awarded under this announcement, additional child care services (from the Discretionary Fund) are available to children who are currently eligible to be served under a State CCDF program.

A. Regulatory and Statutory Requirements

To meet the purposes of the Act, the applicant is required to meet most of the same requirements as grantees receiving tribal formula grants under the CCDF program. Thus, the majority of the information requested under Part IV, General Instructions for the Uniform Project Description, of this program announcement is required by the current regulations at 45 CFR parts 98 and 99 and the CCDBG Act, as amended. Unless otherwise indicated, the regulations at 45 CFR part 98 will apply to grants awarded under this program announcement. As discussed in Part II., B. Grants to Indian Tribes and Tribal Consortia, this information is requested in the CCDF plan for Tribes and tribal consortia. Since the CCDF plan is not appropriate for grants under this announcement, it is incumbent upon the applicant to demonstrate how

their project meets these regulatory and statutory requirements. The applicant must also include a statement that it will comply with the applicable list of assurances found in 45 CFR 98.15 of the CCDF final rule.

B. Eligibility for Services

All eligible children must be under the age of 13 and reside with a family whose income does not exceed 85% of the grantee median income for a family of the same size and whose parent(s) are working or attending a job training or educational program or who receive or need to receive protective services. Grantee median income may be defined as: (1) Tribal median income for a family of the same size residing in the area served by the applicant; or (2) State median income for a family of the same size.

The applicant must indicate which income eligibility definition it plans to use in establishing a child care program under this announcement. In addition, an applicant must define the following terms, as used in their application: (1) Attending (a job training or educational program); (2) *in loco parentis;* (3) job training and educational program; (4) physical or mental incapacity; (5) protective services; (6) residing with; and (7) special needs child. Instructions on defining these terms are included in the Application Kit's ''Supplemental Guide.'' The applicant may elect to establish additional eligibility criteria. For example, the applicant may establish different income limits for part of the population to be served. Any additional eligibility criteria need to be clearly identified and defined by the applicant. The applicant may also elect to waive, on a case-by-case basis, the fee and income eligibility requirements for cases in which children receive or need to receive protective services.

The applicant may provide child care for children age 13 and older who are physically and/or mentally incapable of self-care, but must define these terms in their application. The applicant may also provide child care for children age 13 and older who are under court supervision. If care is to be provided in either circumstance, the applicant must specify the age of the children to be served, up to age 19.

In designing a child care program, the applicant is encouraged to address the before- and after-school care needs of eligible children to be served under this program announcement.

C. Coordination

The applicant must describe how it will coordinate the delivery of CCDF-funded child care services with other Federal, State, and local child care, early childhood development programs, and before- and after-school care services, if applicable.

Child care is an integral part of a community's self-sufficiency and workforce development efforts. In addition, the quality of child care benefits greatly from close coordination with the public health and education communities. Therefore, the applicant must include the results of its coordination activities with agencies responsible for health (including the agency responsible for immunizations), education, employment services or workforce development, and the agency responsible for providing Temporary Assistance for Needy Families (TANF).

D. Public Notice

The applicant is encouraged to engage in a planning process that includes parents, providers, and other relevant stakeholders in the community to be served. As part of the planning process, the applicant must notify those families eligible to be served under this program announcement of the provision of child care services proposed under this project and provide an opportunity for members to comment on the proposed plan through a public hearing. Public notice of the hearing must be made available across the proposed service area at least 20 days prior to the hearing.

E. Parental Choice

One of the goals of the Child Care and Development Block Grant Act is ''to promote parental choice to empower working parents to make their own decisions on the child care that best suits their family's needs.'' In support of this goal, the applicant is expected to design and implement a certificate program since it promotes parental choice in selecting CCDF-funded child care providers. However, while certificates ensure parental choice, contracted slots also play an important role in meeting the child care needs of families, particularly in rural areas, for infant-care, or for children with special needs.

Therefore, it is incumbent for the applicant to design a child care program that will adequately address the needs and unique circumstances of the population it intends to serve. If the applicant is unable to operate a certificate program, or chooses to provide child care services through grants and contracts exclusively, it must justify this approach in its program narrative and assure how the alternative approach will promote parental choice.

F. Quality Activities

The applicant must spend no less than four percent of its grant award on activities to improve the availability and quality of child care. Examples of activities undertaken by CCDF-funded tribal child care programs include: (1) Resource and referral programs; (2) grants or loans to providers to assist in meeting standards; (3) monitoring of compliance with licensing and regulatory requirements; (4) training and technical assistance; (5) compensation for child care providers; and (6) comprehensive consumer education. The applicant may select activities from this list of examples, or design other quality activities that are better suited to the population to be served.

G. Construction or Renovation of Child Care Facilities

Title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193) amended the Child Care and Development Block Grant Act to permit Tribal grantees to use CCDF funds for construction or renovation of child care facilities. Therefore, in its grant application the applicant should describe any anticipated construction and renovation projects that will be funded with CCDF funds, and estimate the amount of funds that will be used for these projects.

However, grant funds cannot be spent for construction or renovation until a grantee has applied for and received approval, through a separate application process, from the Department of Health and Human Services (DHHS). A grantee may submit a request to spend part of its grant for construction or renovation through this separate application process once it has been awarded a CCDF grant under this announcement.

As part of the separate application process, a grantee must show that adequate facilities are not otherwise available to carry out child care programs, and that the lack of facilities will inhibit the operation of such programs in the future. The amount of funds that a grantee may request for construction or renovation through the separate application process is limited to the amount estimated in the grantee's original CCDF application under this announcement.

Furthermore, statutory language at section 6580(c)(6) of the revised CCDBG Act indicates that Congress does not intend for construction and renovation projects to unnecessarily divert resources from the provision of child care services. Because grants under this announcement are designed to establish child care programs in areas with unmet

need, a grantee should reserve adequate funds for direct child care services. While some construction and renovation activity is allowable under this program announcement, in accordance with Part V., A. Criterion 5. Budget, the applicant will have to demonstrate that funds will be used for direct child care services and the funds requested are reasonable in regard to the number of eligible children to be served.

Part IV. General Instructions for the Uniform Project Description

The following ACF Uniform Project Description has been approved under OMB Control Number 0970–0139. This format is to be used to submit an application under this announcement.

A. Introduction

The applicant is required to submit a full project description shall prepare the project description statement in accordance with the following instructions. The pages of the project description must be numbered and are limited to 40 typed pages, double spaced, printed on only one side, with at least ½-inch margins. Pages over the limit will be removed from the application and will not be reviewed. In addition, please note that previous attempts by applicants to circumvent space limitations or to exceed page limits by using small print have resulted in negative responses from reviewers because of the difficulty in reviewing the application.

The applicant should use the evaluation criteria listed in Part V as a way to organize the uniform project description, providing specific information that addresses all components of each criterion.

It is in the applicant's best interest to ensure that the project description is easy to read, logically developed in accordance with evaluation criteria and adhere to page limitations. In addition, the applicant should be mindful of the importance of preparing and submitting applications using language, terms, concepts and descriptions that are generally known to the child care and early childhood fields.

B. Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

C. Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated); some of which may be outside the scope of the program announcement.

D. Results or Benefits Expected

Identify the results and benefits to be derived. For example, describe who will receive child care services, where and how these services will be provided, the anticipated numbers of children and families to be served, and how the services will benefit the children, families and community to be served.

E. Approach

Outline a plan of action, which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of youth to be served and the results of those services. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

Identify the kinds of data to be collected, maintained, and/or disseminated. Note that clearance from the U.S. Office of Management and Budget might be needed prior to a ''collection of information'' that is ''conducted or sponsored'' by ACF. List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

F. Geographic Location

Describe the precise location of the project and boundaries of the area to be served by the proposed project. Maps or other graphic aids may be attached.

G. Additional Information

1. *Staff and position data:* Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

2. *Plan for project continuance beyond grant support:* Provide a plan for securing resources and continuing project activities after Federal assistance has ceased.

3. *Organizational profiles:* Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, *or* by providing a copy of the currently valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

4. *Third-party agreements:* Include written agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements must detail scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

5. *Letters of support:* Provide statements from community, public and commercial leaders that support the project proposed for funding.

6. *Budget and budget justification:* Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must

include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424. Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

Part V. Evaluation Criteria and Selection Process

The five evaluation criteria that follow will be used to review and evaluate each application. Each of the criteria should be addressed in the project description section of the application. The point values indicate the maximum numerical weight each criterion will be accorded in the review process. Note that the highest possible score an application can receive is 100 points.

A. Evaluation Criteria

Criterion 1. Objectives and Need for Assistance (20 Points)

1. The applicant must specify the goals and objectives of the project and how implementation will fulfill the purposes of the amended Child Care and Development Block Grant Act. The applicant must demonstrate a thorough understanding of the Child Care and Development Fund, and the Federal regulations that apply to CCDF grants administered by the Child Care Bureau.

2. The applicant must state the need for assistance by identifying and discussing the critical child care issues affecting Native Hawaiian and or low-income Indian families and the challenges they face as they move toward economic self-sufficiency. Participant and beneficiary information must also be included.

3. The applicant must describe how it will coordinate the delivery of CCDF-funded child care services with other Federal, State and local child care, early childhood development programs, and before- and after-school care services. Supporting documentation of need from other community groups may be included.

4. The applicant must describe the area to be served, indicate the precise locations of program services and demonstrate that the services will be located in an area which is accessible to children and families. Maps or other graphic aids may be attached.

Criterion 2. Results and Benefits Expected (10 Points)

1. The applicant must specify the number of children and families to be served, the array of child care settings available, and the types of other services to be provided (such as quality activities).

2. The applicant must explain how the expected results will benefit the population to be served in meeting its child care needs.

3. The applicant must describe the criteria to be used to evaluate the results and success of the program.

Criterion 3. Approach (40 Points)

1. The applicant must include a detailed plan that identifies goals and objectives and provides a work plan identifying specific activities necessary to accomplish the stated goals and objectives.

2. The applicant must describe how the project will coordinate the delivery of CCDF funded child care services with other Federal, State and local child care, early childhood development programs, and before- and after-school care services. Coordination activities with agencies responsible for health, education, employment services or workforce development and Temporary Assistance for Needy Families must also be addressed.

3. The applicant must describe how it will develop and implement a certificate program that allows parents to choose from a variety of child care categories, including center-based care, group home care, family child care and in-home care (including a description of the certificate payment system). The applicant must also discuss the use of grants or contracts for child care slots, if applicable, and any reasons for limiting the use of in-home care.

4. The applicant must demonstrate that payment rates are adequate to ensure equal access to comparable child care services provided to children whose parents are not eligible to receive child care assistance under the CCDF and other governmental programs based on the results of a required market rate survey. The applicant may base its market rate survey on the State's survey rather than conducting its own survey if the applicant's service area is included in the State's market rate survey. A copy of the required market rate survey must be included.

5. The applicant must explain its eligibility criteria and requirements, including how the applicant will give priority for child care services to children with special needs, and include a copy of the sliding fee scale that will be used to determine each family's contribution to the cost of care (including whether families below the poverty level would be exempted from the fee). An explanation of the use of the sliding fee scale must also be provided.

6. The applicant must describe how it will develop and implement processes with parents including: informing parents about child care services and options, making applications, and eligibility determinations; making available information on parental complaints; and affording parents unlimited access to their children receiving CCDF-funded child care services.

7. The applicant must describe the activities it will develop and implement to improve the availability and quality of child care.

8. The applicant will discuss how it will meet the required health and safety standards by type of provider, particularly in regard to the newly issued guidance on the Minimum Tribal Child Care Standards.

9. The applicant must describe how it will collect data on children and families receiving CCDF-funded child care services.

10. The applicant must describe how the activities implemented under this project will be continued by the agency once Federal funding for the project has ended and must describe specific plans for accomplishing program phase-out in the event the applicant cannot obtain new operating funds at the end of the 36-month project period.

Criterion 4. Staff and Position Data and Organizational Profiles (20 Points)

1. The applicant must discuss staff and organizational experience in working with children and families, particularly in early childhood education and/or child care. The applicant must also document the services it provides to this specific population and the length of time the applicant has been involved in the provision of these services.

2. The applicant must include information on the skills, knowledge and experience of the project director and key project staff. Brief resumes of current and proposed staff, as well as job descriptions, should be included. Resumes must indicate what position the individual will fill and position descriptions must specifically describe the job as it relates to the proposed project. The applicant must also list organizations and consultants who will work on the program along with a short description of the nature of their effort or contribution. The applicant must provide information on plans for training project staff as well as staff of cooperating organizations and individuals.

3. The applicant must demonstrate the ability of the organization to effectively manage the program.

4. The applicant must provide a short description of the applicant agency's organization; the types, quantities and costs of services it provides and must identify and discuss the role of other organizations or multiple sites of the agency that will be involved in direct services to children and families through this grant. List all these sites, including addresses, phone numbers and staff contact names if different than those on the SF 424. If the agency is a recipient of funds from the Administration on Children, Youth and Families for services to children and families for programs other than that applied for in this application (e.g., Head Start, Child Welfare Services), show how the services supported by these funds are or will be integrated with the existing services. Organizational charts may be provided.

5. The applicant must provide an annotated listing of its funding sources and contractual agreements and other relationships which support or complement the provision of child care services to low-income Native Hawaiian and/or Indian children and families.

Criterion 5. Budget (10 Points)

1. The applicant must show the extent to which the funds requested will be used for direct child care services to families through certificates and/or contracted programs for child care slots and are reasonable and justified in regard to the number of eligible children that will receive CCDF-funded child care services under this announcement. Discussion should refer to (1) the budget information presented on Standard Forms 424 and 424A and the applicant's budget justification and (2) the results or benefits identified under Criterion 2 above.

2. The applicant must describe the fiscal control and accounting procedures used to ensure prudent use, proper disbursement and accurate accounting of funds.

B. The Selection Process

The Commissioner, ACYF, will make the final selection of the applicants to be funded. Applications may be funded in whole or in part depending on: (1) the ranked order of applicants resulting from the competitive review; (2) staff review and consultations; (3) the combination of projects that best meets the Bureau's objectives; (4) the funds available; and (5) other relevant considerations.

Selected applicants will be notified through the issuance of a Financial Assistance Award that sets forth the amount of funds granted, the terms and conditions of the grant award, the effective date of the award, the budget period for which support is given, and the total project period for which support is provided.

C. Funding Date

It is anticipated that successful applications will be funded in the second quarter of FY 2001.

Part VI. Application Process

A. Assistance to Prospective Grantees

Potential grantees can direct questions about application forms to the Administration on Children, Youth and Families, Child Care Bureau Program Announcement, 1815 North Fort Myer Drive, Suite 300, Arlington, VA. 22209; Telephone: 1–800–351–2293; electronic mail: CCB@lcgnet.com. Questions about program requirements may be directed to Ginny Gorman, Child Care Bureau; Telephone 202–401–7260; electronic mail: *ggorman@acf.dhhs.gov* or John Coakley, ACF Region IX, San Francisco; Telephone 415–437–8554; Electronic Mail jcoakley@acf.dhhs.gov.

B. Application Requirements

To be considered for a grant, each application must be submitted on the forms provided in the Application Kit and in accordance with the guidance provided below. The application must be signed by an individual authorized to act for the applicant agency and to assume responsibility for the obligations imposed by terms and conditions of the grant award. If more than one agency is involved in submitting a single application, one entity must be identified as the applicant organization that will have legal responsibility for the grant.

C. Paperwork Reduction Act of 1995 (Public Law 104–13)

The Uniform Project Description information collection within this Program Announcement is approved under Uniform Project Description (0970–0139).

Public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information. An agency may not conduct or sponsor and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

D. Notification Under Executive Order 12372

This program announcement is not covered under Executive Order 12372, Intergovernmental Review of Federal Programs,'' and 45 CFR Part 100, ''Intergovernmental Review of Department of Health and Human Services Program and Activities.''

E. Availability of Forms and Other Materials

A copy of the forms that must be submitted as part of an application and instructions for completing the application are provided in the Application Kit. Legislation referenced in Part I, section B.2 of this announcement and the CCDF Final Rule (45 CFR parts 98 and 99) may be found in major public libraries and on the Child Care Bureau's website at http://www.acf.dhhs.gov/programs/ccb/policy1/index.htm. Additional copies of this announcement may be obtained by calling 1–800–351–2293. Many standard forms can also be downloaded and printed from the following ACF webpage: http://www.acf.dhhs.gov/programs/oa/form.htm.

An Application Kit containing the necessary forms and a ''Supplemental Guide to Develop a Funding Application for Native Hawaiian and Nonprofit American Indian Organization Child Care Grants'' may be obtained from: Department of Health and Human Services, Administration for Children and Families, Child Care Bureau, Room 2046, Mary E. Switzer Building, 330 C Street, SW., Washington, DC 20447, *Attention:* ACYF–PA–CCB–2001–01, *Telephone:* (202) 401–7260.

F. Application Consideration

All applications that are complete and conform to the requirements of this program announcement will be subject to a competitive review and evaluation against the specific competitive grant area criteria outlined in Part V of this announcement. This review will be conducted in Washington, D.C., by panels of non-Federal experts knowledgeable in the areas of tribal child care, early childhood education and other relevant areas.

Application review panels will assign a score to each application, identifying its strengths and weaknesses. Both Central and Regional Hub office staff will conduct administrative reviews of the applications and the results of the competitive review panels and will recommend applications for funding to the Commissioner, ACYF. The Commissioner will make the final

selection of the applications to be funded. The Commissioner may also elect not to fund any applicants having known management, fiscal, reporting, program, or other problems which make it unlikely that they would be able to provide effective services.

Successful applicants will be notified through the issuance of a Financial Assistance Award which will set forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, and the budget period for which initial support will be given.

Organizations whose applications will not be funded will be notified in writing by the Commissioner of the Administration on Children, Youth and Families. Every effort will be made to notify all unsuccessful applicants as soon as possible after final decisions are made.

Part VII. Application Content and Submission Instructions

A. Application Content

Each application must contain the following items in the order listed:

1. Application for Federal Assistance (Standard Form 424, REV 4–92). Follow the instructions in the Application Kit. In Item 8 of Form 424, check ''New.'' In Item 10 of the 424, clearly identify the *Catalog of Federal Domestic Assistance* (CFDA) program title and number: Child Care and Development Block Grant, 93.575.

2. Budget and Budget Justification (Standard Form 424A, REV 4–92). Follow the instructions in the Application Kit. The budget justification should be typed on standard size plain white paper, provide breakdowns for major budget categories and justify significant costs. List amounts and sources of all funds, both Federal and non-Federal, to be used for this project.

3. Project Summary/Abstract (one page maximum). Clearly mark this page with the applicant name as shown on item 5 of the SF 424, identify the title of the proposed project as shown in item 11 and the service area as shown in item 12 of the SF 424. The summary description should not exceed 300 words.

Care should be taken to produce a summary which accurately and concisely reflects the proposed project. It should describe the objectives of the project, the approach to be used and the results and benefits expected.

4. Assurances/Certifications. The applicant must sign and return a SF 424B, Assurances—non-Construction Programs form and the Certification Regarding Lobbying form and return them with the application. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances and certifications. *Note:* Although construction is an allowable cost if approved by ACF (see Part III, G), the non-construction assurances are required for purposes of this application. All requirements related to construction will be addressed through the separate application process for construction and renovation.

In addition, the applicant must certify its compliance with: (1) Drug-Free Workplace Requirements; (2) Debarment and Other Responsibilities; and (3) Pro-Children Act of 1994 (Certification Regarding Environmental Tobacco Smoke). A signature on the SF 424 indicates compliance with the Drug Free Workplace Requirements, Debarment and Other Responsibilities and Environmental Tobacco Smoke Certifications. A signature on the application constitutes an assurance that the applicant will comply with the pertinent Departmental regulations contained in 45 CFR Part 74.

5. Documents of Support. The maximum number of pages for supporting documentation is 10 pages, double-spaced, exclusive of letters of support or agreement. These documents must be numbered and might include resumes, photocopies of news clippings, evidence of the program's efforts to coordinate child care services at the local level, etc. Documentation over the ten-page limit will not be reviewed. The applicant may, however, include as many letters of support or agreement as are appropriate.

B. Application Submission

To be considered for funding, the applicant must submit one signed original and two additional copies of the application, including all attachments, to the application receipt point specified above. The original copy of the application must have original signatures, signed in *black* ink. Each copy must be stapled (back and front) in the upper left corner. All copies of an application must be submitted in a single package.

Because each application will be duplicated, do not use or include separate covers, binders, clips, tabs, plastic inserts, maps, brochures or any other items that cannot be processed easily on a photocopy machine with an automatic feed. Do not bind, clip, staple, or fasten in any way separate subsections of the application, including supporting documentation. Applicants are advised that the copies of the application submitted, not the original, will be reproduced by the Federal government for review.

(Catalog of Federal Domestic Assistance: Child Care and Development Block Grant, 93.575)

Dated: November 3, 2000.

James A. Harrell,

Deputy Commissioner, Administration on Children, Youth and Families.

[FR Doc. 00–28798 Filed 11–08–00; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1033]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Draft Guidance for Industry on Information Program on Clinical Trials for Serious or Life-Threatening Diseases: Establishment of a Data Bank

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by December 11, 2000.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Draft Guidance for Industry on Information Program on Clinical Trials for Serious or Life-Threatening Diseases: Establishment of a Data Bank

In the **Federal Register** of March 29, 2000 (65 FR 16620), FDA issued a draft guidance to industry on

recommendations for investigational new drug application (IND) sponsors on submitting information about clinical trials for serious or life-threatening diseases to a Clinical Trials Data Bank developed by the National Library of Medicine, National Institutes of Health (NIH). This information is especially important for patients and their families seeking opportunities to participate in clinical trials of new drug treatments for serious or life-threatening diseases. The draft guidance describes three collections of information: Mandatory submissions, voluntary submissions, and certifications.

I. Mandatory Submissions

Section 113 of the Food and Drug Administration Modernization Act (the Modernization Act) (Public Law 105–115) requires that sponsors shall submit information to the Clinical Trials Data Bank when the clinical trial: (1) Involves a treatment for a serious or life-threatening disease, and (2) is intended to assess the effectiveness of the treatment. The draft guidance discusses how sponsors can fulfill the requirements of section 113 of the Modernization Act. Specifically, sponsors should provide: (1) Information about clinical trials, both federally and privately funded, of experimental treatments (drugs, including biological products) for patients with serious or life-threatening diseases; (2) a description of the purpose of the experimental drug; (3) patient eligibility criteria; (4) the location of clinical trial sites; and (5) a point of contact for patients wanting to enroll in the trial.

II. Voluntary Submissions

Section 113 of the Modernization Act also specifies that sponsors may voluntarily submit information pertaining to results of clinical trials, including information on potential toxicities or adverse effects associated with the use or administration of the investigational treatment. Sponsors may also voluntarily submit studies that are not trials to test effectiveness, or not for serious or life-threatening diseases, to the Clinical Trials Data Bank. This notice of proposed collection only applies to the voluntary submission of information pertaining to studies that are not trials to test effectiveness or not for serious or life-threatening diseases. Any paperwork burden associated with the voluntary submission of information pertaining to the results of clinical trials will be discussed in the implementation document.

III. Certifications

Section 113 of the Modernization Act specifies that the data bank will not include information relating to a trial if the sponsor certifies to the Secretary of Health and Human Services (the Secretary) that disclosure of the information would substantially interfere with the timely enrollment of subjects in the investigation, unless the Secretary makes a determination to the contrary.

Description of Respondents: A sponsor of a drug or biologic product regulated by the agency under the Federal Food, Drug, and Cosmetic Act or section 351 of the Public Health Service Act (42 U.S.C. 262) who submits a clinical trial to test effectiveness of a drug or biologic product for a serious or life-threatening disease.

Burden Estimate: The information required under section 113(a) of the Modernization Act is currently submitted to FDA under 21 CFR part 312, and this collection of information is approved under OMB Control Number 0910–0014 until September 30, 2002, and, therefore, does not represent a new information collection requirement. Instead, preparation of submissions under section 113 of the Modernization Act involves extracting and reformatting information already submitted to FDA. Although the procedures (where and how) for the actual submission of this information have not yet been developed, the agency believes it has an adequate basis for the determination of the hourly burden related to extracting and reformatting this information. The chart below provides an estimate of the annual reporting burden for the submission of information to satisfy requirements of section 113 of the Modernization Act. The Center for Drug Evaluation and Research (CDER) is currently receiving 99.2 new protocols per week (mean value, March through May 1999), or 5,158 new protocols per year. CDER anticipates that protocol submission rates will remain at or near this level in the near future. Of these new protocols, an estimated two-thirds are for serious or life-threatening diseases and would be subject to either voluntary or mandatory reporting requirements under section 113 of the Modernization Act. Two-thirds of 5,158 protocols per year is 3,439 new protocols per year. An estimated 65 percent of the new protocols for serious or life-threatening diseases submitted to CDER are for clinical trials involving assessment for effectiveness, and are subject to the mandatory reporting requirements under section 113 of the Modernization Act. Sixty-five percent of 3,439 protocols per year is 2,235 new protocols per year subject to mandatory reporting. The remaining 2,923 new protocols per year are subject to voluntary reporting.

The Center for Biologics Evaluation and Research (CBER) is currently receiving 29 new protocols per month, or 348 new protocols per year. CBER anticipates that protocol submission rates will remain at or near this level in the near future. An estimated two-thirds of the new protocols submitted to CBER are for clinical trials involving a serious or life-threatening disease, and would be subject to either voluntary or mandatory reporting requirements under section 113 of the Modernization Act. Two-thirds of 348 new protocols per year is 232 new protocols per year. An estimated 65 percent of the new protocols for serious or life-threatening diseases submitted to CBER are for clinical trials involving assessments for effectiveness. Sixty-five percent of 232 protocols per year is an estimated 151 new protocols per year subject to the mandatory reporting requirements under section 113 of the Modernization Act. The remaining 197 new protocols per year are subject to voluntary reporting.

The estimated total number of new protocols for serious or life-threatening diseases subject to mandatory reporting requirements under section 113 of the Modernization Act is 2,235 for CDER plus 151 for CBER, or 2,386 new protocols per year. The remainder of protocols submitted to CDER or CBER will be subject to voluntary reporting, including clinical trials not involving a serious or life-threatening disease as well as trials in a serious or life-threatening disease but not involving assessment of effectiveness. Therefore, the total number of protocols (5,506) minus the protocols subject to mandatory reporting requirements (2,386) will be subject to voluntary reporting, or 3,120 protocols.

It was originally estimated that the protocol submissions to the data bank will be updated 2.5 times per year under section 113 of the Modernization Act. In the **Federal Register** of March 29, 2000, the agency requested comments on the proposed collection of information. One comment was received. The comments stated that FDA greatly underestimated the burden by excluding multicenter studies and not accounting for the quality control review of the data before it is submitted to the data bank. We estimated that 5,506 new protocols are submitted each year and each new protocol is updated 2.5 times per year with information that would necessitate

a change in the data bank. We further estimated that each change requires an average of 5.6 hours resulting in 77,084 hours spent by respondents per year. These estimates included protocols subject to mandatory and voluntary reporting requirements.

For the revised justification, we reviewed actual IND data from 1997 to 1999, and as a result of our reanalysis we incorporated new estimates that consider multicenter studies. The average number of IND amendments submitted annually for protocol changes (e.g., changes in eligibility criteria) was 4,019 for CDER and 1,441 for CBER. The average number of IND amendments submitted annually for new investigators was 7,745 for CDER and 1,349 for CBER. The number of protocol changes and new investigators was apportioned proportionally between mandatory and voluntary submissions. We recognize that single submissions may include information about multiple sites.

Generally, there is no submission to FDA when an individual study site is no longer recruiting study subjects. For this analysis, we assumed that the number of study sites closed each year is similar to the number of new investigator amendments received by FDA (7,745 CDER and 1,349 CBER).

Generally, there is no submission to FDA when the study is closed to enrollment. We estimate the number of protocols closed to enrollment each year is similar to the number of new protocols submitted (5,158 CDER and 348 CBER).

The hours per response is the estimated number of hours that a respondent would spend preparing the information to be submitted under section 113(a) of the Modernization Act, including the time it takes to extract and reformat the information. FDA has been advised that some sponsors lack information system capabilities enabling efficient collection of company-wide information on clinical trials subject to reporting requirements under section 113(a) of the Modernization Act. The estimation of burden under section 113(a) reflects the relative inefficiency of this process for these firms.

Based on its experience reviewing IND's, and consideration of the above information, FDA estimated that approximately 5.6 hours on average would be needed per response (mean value), based on an estimated 3.2 hours for data extraction and 2.4 hours for reformatting. We considered quality control issues when developing the original burden estimates of 3.2 hours for data extraction and the 2.4 hours estimated for reformatting. Additionally, the data entry system being developed incorporates features that will further decrease the sponsor's time requirements for quality control procedures. No new estimates for quality control are included in the reanalysis.

The new estimate continues to use an average of 5.6 hours per response for calculations related to new submissions. Changes related to the addition and deletion of investigational sites will involve minimal resource commitments from the sponsor. Further, many protocol changes will not require changes to the data bank. Other protocol changes will require minimal time to make changes to the data bank (e.g., modification of eligibility criteria). The 5.6 hours per response estimate for these types of responses is high.

A sponsor of a study subject to the requirements of section 113 of the Modernization Act will have the option of submitting data under that section or certifying to the Secretary that disclosure of information for a specific protocol would substantially interfere with the timely enrollment of subjects in the clinical investigation. FDA has no means to accurately predict the proportion of protocols subject to the requirements of section 113 of the Modernization Act that will be subject to a certification submission. However, it is anticipated that the burden associated with such certification will be comparable to that associated with submission of data regarding a protocol. Therefore, the overall burden is anticipated to be the same, regardless of whether the sponsor chooses data submission or certification for nonsubmission. The table below reflects the estimate of this total burden.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

	New Protocols	Recruitment Complete	Protocol Changes	New Investigators	Sites Closed	Total Responses	Hours per Response	Total Hours
CDER (mandatory)	2,235	2,235	1,728	3,330	3,330	12,858	5.6	72,005
CBER (mandatory)	151	151	620	580	580	2,082	5.6	11,659
CDER (voluntary)	2,923	2,923	2,291	4,415	4,415	16,967	5.6	95,015
CBER (voluntary)	197	197	821	769	769	2,753	5.6	15,417
Total								194,096

[1] There are no capital and startup, or operation and maintenance costs associated with this collection of information.

The revised burden estimate for responses (34,660) is 2.5 times the original estimate (13,765).

We believe that the original burden estimate of 77,084 hours spent per year underestimated the burden. The new estimate, 194,096 hours per year (34,660 responses x 5.6 hours per response), more accurately reflects the burden.

NIH and FDA are considering a pilot program for the electronic submission of protocol information over the Internet. The purpose of the pilot project is twofold. First, the pilot project will allow FDA to test its systems for receiving electronic submissions under section 113 of the Modernization Act. Second, the pilot project will provide opportunities for volunteers to gain experience in using the prototype system that will enable them to provide technical feedback on how well the system is working, and also to offer suggestions for change. The experience gained from this pilot project also will facilitate the development of the implementation plan.

FDA anticipates that up to 25 sponsors will volunteer to participate in a pilot program involving the electronic submission of protocol information over the Internet. Protocol information entered into the system during the pilot project will be included in the Clinical Trials Data Bank (ClinicalTrials.gov). We estimate that each sponsor will include 10 protocols in the data bank. We estimate that each protocol will be modified two times and add three new sites. It is assumed that the sites will remain open for the duration of the pilot. The one-time burden estimate for the pilot program is 8,400 (1,500 responses x 5.6 hours/response). Since

the pilot protocols will be included in the ClinicalTrials.gov data bank, the estimated annual burden for the first year will be reduced by the number of protocols included in the pilot.

FDA estimates the burden of the collection of information as follows:

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN [1]

	New Protocols	Protocol Changes	New Investigators	Total Annual Responses	Hours per Response	Total Hours
CDER	200	400	600	1,200	5.6	6,720
CBER	50	100	150	300	5.6	1,680
Total						8,400

[1] There are no capital and startup, or operation and maintenance costs associated with this collection of information.

Dated: November 6, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–28851 Filed 11–8–00; 8:45 am]

BILLING CODE 4160–01–F /

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1441]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Infant Formula Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by December 11, 2000.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Infant Formula Requirements (OMB Control Number 0910–0256)—Extension

Statutory requirements for infant formula under the Federal Food, Drug, and Cosmetic Act (the act) are intended to protect the health of infants and include a number of reporting and recordkeeping requirements. Among other things, section 412 of the act (21 U.S.C. 350a) requires manufacturers of infant formula to: (1) Establish and adhere to quality control procedures, (2) notify FDA when a batch of infant formula that has left the manufacturers' control may be adulterated or misbranded, and (3) keep records of distribution. FDA has issued regulations to implement the act's requirements for infant formula in parts 106 and 107 (21 CFR parts 106 and 107). FDA also regulates the labeling of infant formula under the authority of section 403 of the act (21 U.S.C. 343). Under the labeling regulations for infant formula in part 107, the label of an infant formula must include nutrient information and directions for use. The purpose of these labeling requirements is to ensure that consumers have the information they need to prepare and use infant formula appropriately. In a document published in the **Federal Register** of July 9, 1996 (61 FR 36154), FDA proposed changes in the infant formula regulations, including some of those listed in tables 1 and 2 of this document. The document included revised burden estimates for the proposed changes and solicited public comment. In the interim, however, FDA is seeking an extension of OMB approval for the current regulations so that it can continue to collect information while the proposal is pending.

In the **Federal Register** of August 18, 2000 (65 FR 50539), the agency requested comments on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Federal Food, Drug, and Cosmetic Act (the Act) or 21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Section 412(d) of the act	4	7	28	10	280
106.120(b)	4	0.25	1	4	4
107.10(a) and 107.20	4	7	28	8	224
107.50(b)(3) and (b)(4)	3	4	12	4	48
107.50(e)(2)	3	0.33	1	4	4
Total					560

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
106.100	4	10	40	4,000	16,000
107.50(c)(3)	3	10	30	3,000	9,000
Total					25,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In compiling these estimates, FDA consulted its records of the number of infant formula submissions received in the past. The figures for hours per response are based on estimates from experienced persons in the agency and in industry.

Dated: November 6, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–28852 Filed 11–8–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Radiological Health Reengineering; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA), Center for Devices and Radiological Health (CDRH), is announcing a public workshop intended to gather information regarding its radiological health programs. The topic to be discussed is reengineering of electronic product radiation control processes with attention to prioritization, information exchange on new technology and public health issues, standards, and product testing.

Date and Time: The public workshop will be held on November 15 and 16, 2000, 8:30 a.m. to 4:30 p.m.

Location: The public workshop will be held at the Holiday Inn, Two Montgomery Village Ave., Gaithersburg, MD.

Contact: Joanne Barron, Center for Devices and Radiological Health (HFZ–342), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4654, FAX 301–594–4672, e-mail: jxb@cdrh.fda.gov.

SUPPLEMENTARY INFORMATION: At the workshop, FDA would like to hear whether certain radiological health programs and processes would benefit from changes and, if so, which changes would be most effective. The purpose of reengineering the radiological health processes is to make the best use of FDA expertise and resources in performing activities that best fulfill FDA's role in radiation protection. While reengineering provides opportunities to shift priorities, FDA also would like to establish partnerships with others who have a role in radiation protection from electronic products.

During the past 2 years, FDA obtained comments from stakeholders on improvements needed in the radiological health program. Comments received suggested four areas for improvement: (1) Prioritization, (2) information exchange, (3) standards, and (4) product testing. Several FDA teams considered the ideas and now would like public participation in revising the processes. CDRH must prioritize the use of limited resources to effectively and efficiently address these public health concerns. To that end, FDA issues recommendations and guidance and develops and enforces regulatory performance standards for radiation-emitting electronic products to minimize exposures to unnecessary radiation. FDA develops test methods and tests electronic products to ensure conformance to standards, identify nationwide exposure trends, and provide a basis for analyzing new technologies. FDA and stakeholders need information on product emissions, exposures, use, and health effects as a basis for decisions and actions. CDRH expects this public workshop to benefit the radiological health reengineering effort by developing practical solutions to the following questions:

1. How should CDRH choose and implement specific radiological health activities and set priorities?

2. How can CDRH optimize and improve the development/administration of electronic product radiation standards, recommendations, and guidances?

3. How can CDRH optimize and improve the evaluation of radiation emissions and exposures from electronic products?

4. How can CDRH better communicate and network with partners (States, other Federal agencies, industry, health professionals, standards organizations, etc.) regarding its radiological health program?

FDA will conduct concurrent breakout sessions on each of the four topics during this public workshop.

Registration and Requests for Oral Presentations: Send registration information (including name, title, firm name, address, telephone, fax number, and e-mail address), and written material and requests to make oral presentations to Diarra Hall at Laurel Consulting Group, 14504 Greenview Dr., suite 500, Laurel, MD 20708, 301–490–5500, FAX 301–490–7260 by November 13, 2000; or complete the registration form that is available at http://www.fda.gov/cdrh/reenging/radhlth/index.html.

If you need special accommodations due to a disability, please contact Diarra Hall in advance.

Transcripts: Transcripts of the public workshop 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 public workshop at a cost of 10 cents per page.

Dated: November 2, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–28694 Filed 11–8–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1562]

Draft Guidance for Industry on Cancer Drug and Biological Products—Clinical Data in Marketing Applications; 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 ''Cancer Drug and Biological Products—Clinical Data in Marketing Applications.'' The draft guidance document provides recommendations for sponsors designing clinical trials to demonstrate the safety and efficacy of cancer treatments on the collection of data that may be submitted to support marketing claims in new drug applications (NDA's), biologics license applications (BLA's), or applications for supplemental indications.

DATES: Submit written comments on the draft guidance by January 8, 2001. General comments on agency guidance documents are welcome at any time.

ADDRESSES: 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, or the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

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

FOR FURTHER INFORMATION CONTACT: Grant A. Williams, Center for Drug Evaluation and Research (HFD–150), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5740, or Patricia Keegan, Center for Biologics Evaluation and Research (HFM–573), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–5093.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Guidance for Industry: Cancer Drug and Biological Products—Clinical Data in Marketing Applications.'' This draft guidance provides general principles for data collection and submission for sponsors of investigational new drug applications, NDA's, BLA's, or applications for supplemental indications. It is intended to enable sponsors to more effectively create plans to record and report the data from controlled trials that form the clinical basis for approval of anticancer drug and biological products.

This draft level 1 guidance is being issued consistent with FDA's good guidance practices (65 FR 56468, September 19, 2000). The draft guidance represents the agency's current thinking on clinical data in marketing applications for cancer drug or biologic products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit written comments on the draft guidance to the Dockets Management Branch (address above). 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.

III. Electronic Access

Persons with access to the Internet may obtain the document at http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/cber/guidelines.htm.

Dated: October 30, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–28776 Filed 11–8–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Statement of Mission, Organization, Functions and Delegation of Authority

Part G, of the statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, as amended at 60 FR 56606, November 9, 1995, and most recently amended at 61 FR 67048, December 19, 1996, is amended to reflect a reorganization of the Office of Public Health (GAB), Indian Health Service (IHS).

The changes are as follows:

Delete the functional statements for the Office of Public Health in their entirety and replace with the following:

Section GAB–00, Office of Public Health, IHS—Mission. The Office of Public Health, IHS defines its mission as a commitment to the well-being and cultural integrity of Indian people through a participatory and consultative process. The goal of the Office of Public Health is to elevate the health status of American Indian and Alaska Native (AI/AN) people to the highest possible level by (1) providing and/or assuring availability; (2) providing increasing opportunities for Indians to manage and operate their own health programs; and (3) serving as an advocate for Indian people.

Section GAB–10, Functions Office of Public Health (OOH) (GAB). (1) Advises and supports the Director, Indian Health Service (IHS), on policy, budget formulation, resource allocation regarding the operation and management of IHS direct, tribal, and urban public health programs, risk management, quality assurance, facilities programs, and self-determination; (2) provides agency-wide leadership and consultation to IHS direct, tribal, and urban public health programs on IHS goals, objectives, policies, standards, and priorities; (3) represents the IHS within the HHS and external organizations for purposes of liaison, professional collaboration, cooperative ventures, and advocacy; (4) manages and provides national leadership and consultation for IHS and Area offices on strategic and tactical planning, program evaluation and assessment, public health and medical services, research agendas, and special public health initiatives for the agency; (5) manages the design, development, and assessment for implementation of resource requirements and resource allocation methodology models for the agency; (6) manages demographic and program databases and performs statistical and epidemiological analyses and consultation; (7) carries out IHS responsibilities as required by the United States Federal Response Plan under Emergency Support Function No. 8; (8) assures agency compliance with the Code of Federal Regulations 45, Part 46, Protection of Human Subjects; and (9) manages and administers the functions related to business office services, contract health care, clinical and community services, preventive services, managed care, hospitals and ambulatory care centers, general public health practices and advocacy, environmental health, realty, facilities construction, facilities operation and

management, and environmental engineering.

Office of Executive Management (GAB–1). (1) Provides leadership and advice to the Director and public health programs on policy, budget, personnel, business office and the health care financing administration issues, and general administration; (2) represents the Director, Office of Public Health (OPH), in meetings with IHS employees and high-level management officials within the IHS, HHS, or other Federal agencies, tribes, and other organizations on administrative/management and policy issues. (3) participates with the National Council of Executive Officers, and meets with HHS/IHS leadership to provide agency advice on management and administrative matters; (4) administers, monitors, and assists in the development of office and program budgets and budget formulation; (5) manages and oversees the IHS third-party revenue generation activity; (6) participates in self-determination issues and processes pertaining to budget and tribal shares computation (7) functions as operational manager for administrative policies and activities within the OPH; and (8) provides guidance and carries out OPH responsibilities regarding Equal Employment Opportunities (EEO), labor relations, and other employee relations activities.

Administrative Management Team. (1) Provides program budget execution, analysis, and oversight; (2) provides guidance and coordinates the development and review of the OPH sections of the Department and Congressional budgets and presentation materials; (3) coordinates and assists in review of responses to budget inquiries and budgets materials for Congressional hearings and meetings; (4) coordinates, develops, promulgates, and maintains administrative policies, procedures, and manual issuances for the OPH; (5) monitors and administers existing agency administrative policies for OPH; (6) provides the OPH executive secretariat function; (7) serves as the review and coordinating point for OPH managed intra and interagency agreements; (8) serves as the principal resource for OPH personnel management and training issues consultation; (9) serves as the principal resource for OPH office space, property and supply activities; (10) serves as a general administrative resource for special activities/initiatives; and (11) provides direction and oversight on daily operations for the OPH.

Business Office Services Team. (1) Serves as the primary focal point for Business Office Services (BOS) program operations and policy issues and represents BOS in national forums; (2) ensures improvement of the effectiveness and efficiency of the revenue generation activity, and provides support for local capacity building. (3) develops, disseminates, and maintains BOS policy and procedures manual (4) develops and promulgates standards and conducts BOS program reviews on a recurring, scheduled basis; (5) provides national leadership for Medicare, Medicaid, and private insurance reimbursement policy and procedures; (6) serves as the primary liaison with the Health Care Financing Administration for rate setting negotiations (7) serves as the focal point regarding Medicare and Medicaid managed care activities, including the review, evaluation, and monitoring of Sections 1115 and 1915(b) Medicaid waiver proposals and other State and Federal health care reform activities; (8) provides programmatic management of information systems for patient registration and billing and collections systems (9) assures training on various regulatory issues and negotiated managed care provider agreements; and (10) develops third-party budget materials and responds to congressional departmental inquiries regulating to third-party issues.

Office of Program Support (GAB–2). (1) Serves as a coordinating point for public health advocacy and as a source of technical support, development, and dissemination of policy advice for IHS Headquarters, OPH, Area offices, and facilities programs on the full scope of the public health and health data issues and activities; (2) serves as a resource and provides coordination and consultation to the IHS direct, tribal, and urban health programs (I/T/U) on public health issues; (3) provides and directs public health surveillance, intervention, research and evaluation programs, and the information systems to support them; (4) develops and coordinates agency strategic planning and performance measurement efforts with budgeting and requirements in consultation with OPH program staff; (5) provides consultation and coordination on the IHS budget formulation activity for planing and data purposes; (6) maintains, analyzes, makes accessible, and publishes results from national demographic and program databases; and (7) performs statistical and epidemiological consultation and coordination for the IHS in response to special conditions and communicable disease outbreaks of public health significance.

Office of Clinical and Preventive Service (GAB1). (1) Serves as the primary source of technical and policy advice, and supports local capacity building for clinical and public health infrastructure for the IHS, Area offices, and I/T/U programs, on the full scope of clinical health care programs, including their quality assurance and preventive aspects, and tort claims; (2) provides leadership in articulating the clinical needs of the American Indian/Alaska Native (AI/AN) population and competing health care needs; (3) advocates the resource needs of specialized health care delivery providers of clinical services disciplines; (4) provides leadership, consultation and technical support to I/T/U public health programs; (5) develops, manages, and administers the program functions that includes, but are not limited to, behavioral health, chronic disease such as diabetes and cancer, dental services, emergency medial services, health records, maternal and child health, social services, pharmacy services, nursing services, nutrition and dietetics, laboratory, disabilities, and contract health care services; (6) investigates evidence-based and best practice models of service delivery for dissemination to community service locations; and (7) coordinates development of staffing requirements for new or replacement health care facilities and approves Congressional budget requests for staffing.

Division of Behavioral Health (GAB11). (1) Identifies industry program standards and monitors and evaluates community and Area-wide services provided through grants or contracts with Indian tribes, Indian organizations, and direct IHS operations in the area or mental health, social services, alcohol/substance abuse, and health education; (2) coordinates the Indian community behavioral health programs, such as alcoholism/substance abuse, mental health, social work, and health education with tribal program directors, division staff, Area line staff, and other agencies and institutions; (3) coordinates contracts and grants for behavioral health services and monitors services provides; (4) makes program and policy changes using data analysis, recommendations from operations levels, and research results. Coordinates resources allocation from program policies; (5) plans, develops, and coordinates a comprehensive mental health, social service, substance abuse and health education program and programs for children with special needs; (6) provides behavioral health program consultation to tribal groups and IHS staff; (7) provides leadership in

the identification of behavioral change interventions and supports implementations at the community level; (8) coordinates with State, Federal, professional, private, and community organizations on alternate health care resource; (9) provides leadership in measuring and evaluating the quality of behavioral health care services; and (10) prepares information on behavioral health for budgetary hearings, and program evaluation results for the IHS Director, the Congress, and the American people.

Division of Clinical and Community Services (GAB12). (1) Manages, develops, coordinates, and evaluates a comprehensive clinical and community program focusing on diabetes, maternal/child health, Indian children services, nutrition, AIDS, pharmacy, laboratory, health records, and health promotion and disease prevention; (2) develops and establishes standards for clinical and community services and special initiatives; (3) develops objectives, priorities, and methodologies for the conduct and evaluation of clinical and community health-based program; (4) provides, develops, and implements IHS guidelines, policies, and procedures on clinical and community based programs and initiatives; (5) monitors, evaluates, and provides consultation to clinical and community programs and new initiatives; (6) plans jointly with other agencies on research and coordinated services; (7) coordinates training needs and staff recruitment, assignment and development to meet service unit, area, and tribal needs; (8) provides increased awareness for health promotion and disease prevention and the maintenance of health; (9) coordinates and monitors contracts and grants with I/T/Us and other entities; (10) coordinates model diabetes program sites and provides support and direction to I/T/Us on diabetes related issues; (11) develops and disseminates information and materials to IHS facilities and (I/T/U); and (12) develops program budget materials and responds to congressional and department inquiries.

Division of Nursing Services (GAB13). (1) Manages the IHS Nursing Services, Women's Health, and Community Health Representative programs and advocates for program needs; (2) plans, develops, coordinates, and evaluates nursing and the community health representative program; (3) identifies and establishes standards for nursing services and the community health representative program; (4) provides leadership, professional guidance, and staff development; (5) plans, develops, coordinates, manages, and evaluates nursing education; (6) coordinates the assignment and development of professional staff, including nursing recruitment staff, and scholarship recipients, to meet Service Unit, Area, and tribal needs in accordance with IHS policies and procedures; (7) provides guidance in planning, developing, and maintaining management information systems; and (8) prepares budgetary data, analysis and program evaluations and prepares information for program and budget presentations and congressional hearings.

Division of Oral Health (GAB14). (1) Plans, develops, coordinates, and evaluates dental health programs; (2) establishes staffing, procedural, facility, and dental contract standards; (3) coordinates professional recruitment, assignment, and staff development; (4) improves effectiveness and efficiency of dental programs; (5) develops resource opportunities and monitors utilization of resources for dental health programs; (6) formulates and allocates dental program budget; (7) advocates for oral health needs of AI/AN population; (8) coordinates health promotion and disease prevention activities for the dental program; and (9) monitors oral health status and treatment needs of the AI/AN population.

Division Contract Care and Risk Management (GAB15). (1) Plans, develops, and coordinates the Contract Health Service (CHS) program; (2) serves as the primary focal point for Contract Health Support (CHS) program operations and policy issues, and represents CHS in national forums; (3) develops, disseminates, and maintains CHS policy and procedures manual; (4) conducts CHS program reviews on a recurring, scheduled basis; (5) monitors the implementation of the IHS payment policy and reports the status to the Director, OPH; (6) administers the Catastrophic Health Emergency Fund; (7) administers the CHS Quality Assurance Fund; (8) administers the CHS claims adjudication activity for the IHS Headquarters; (9) administers the IHS fiscal intermediary contract and conducts data analysis; (10) coordinates the development of the CHS budget and the allocation of resources; (11) provides consultation to Headquarters and Area offices, and responds to inquiries from the Congress, tribes, and other Federal agencies; (12) serves as the primary source of technical and policy advice and consultation for IHS Headquarters and the OPH on risk management, quality assurance, and workers compensation; (13) manages the clinical features of tort claims against the IHS; (14) develops and disseminates clinical and personal risk management recommendations; (15) manages the IHS workman's compensation claims; and (16) oversees IHS efforts in a variety of quality assurance and improvement activities.

Office of Environmental Health and Engineering (GAB2). (1) Serves as the primary source of technical and policy advice for IHS Headquarters and Area offices, tribal, and urban public health programs on the full scope of health care facilities, sanitation facilities construction (SFC) and management, environmental health, environmental engineering, clinical engineering, and realty services management; (2) develops objectives, priorities, standards, and methodologies for the conduct and evaluation of environmental health, environmental engineering, and facilities engineering and management activities; (3) coordinates the formulation of the IHS Facilities budget request and responds to all inquiries about the budget request and programs funded by the IHS Facilities appropriation; (4) maintains needs-based and workload-based methodologies for equitable resource distribution for all funds appropriated under the IHS Facilities appropriation; (5) provides leadership, consultation, and staff development to assure functional, safe, and well-maintained health care facilities, a comprehensive environmental health program, and the availability of water, sewer, and solid waste facilities for Indian homes and communities; and (6) coordinates the IHS responses to disasters and other emergency situations.

Division of Sanitation Facilities Construction (GAB21). (1) Develops, implements, and manages the environmental engineering programs including the SFC program, and compliance activities associated with environmental protection and historic preservation legislation; (2) provides agency-wide management assistance and special support/consultation to address special environmental public health problems, environmental engineering/construction activities and compliance with environmental legislation; (3) works closely with other Federal agencies to resolve environmental issues and maximize benefits to tribes by coordinating program efforts; (4) develops, implements, and evaluates agency program activities, objectives, policies, plans, guidelines, and standardized data systems for SFC activities; (5) consults with tribal groups/organizations in the development and implementation of SFC policies and initiatives, and in the identification of sanitation needs; (6) maintains a national inventory of current tribal sanitation facilities needs,

and past and present projects to address those needs; and (7) allocates financial resources nationwide based on need and workload using the national data inventories.

Division of Environmental Health Services (GAB22). (1) Develops, implements, and manages IHS Environmental Health Services programs including the Injury Prevention and Institutional Environmental Health programs, and serves as the primary source of technical and policy advice for IHS Headquarters and Area offices on the full scope of environmental health issues and activities; (2) maintains interagency relationships with other Federal agencies and tribes to maximize interagency and intertribal responses to environmental health issues and maximize benefits to tribes by coordinating program efforts; (3) provides leadership in identifying and articulating environmental health needs of AI/AN populations and support efforts to build tribal capacity; (4) provides personnel support services and advocates for environmental health providers; (5) maintains, analyzes, makes accessible, and publishes results from national data bases; (6) manages resource allocation activities in accordance with established criteria based on workload; (7) develops and evaluates standards and guidelines for environmental health programs and activities; and (8) performs functions related to environmental health programs such as injury prevention, emergency response, water quality, food sanitation, occupational health and safety, solid and hazardous waste management, environmental health issues in health care and non-health care institutions, and vector control.

Division of Facilities Operations (GAB23). (1) Develops, implements, and manages the programs affecting health care facilities operations, including routine maintenance and improvement (M&I), quarters, realty, and clinical engineering programs; (2) develops, implements, monitors, and evaluates agency program activities, objectives, policies, plans, guidelines, and standardized data systems for health care facilities operations; (3) serves as principal resource for coordination of facilities operations and provides consultation to IHS and the tribes on health care facilities operations; (4) maintains realty and quarters management systems; (5) maintains clinical engineering management systems; (6) formulates financial resources allocation methodologies nation-wide based on need and workload data; (7) maintains nation-wide data on Federal and tribal facilities for program budget justification; and (8) develops and evaluates technical standards and guidelines for health care facilities operations.

Division of Facilities Planning and Construction (GAB24). (1) Develops, implements, and manages IHS Health Care Facilities Planning and Construction program, including the facilities planning process, facilities design process, facilities acquisition, and construction project management; (2) develops, implements, monitors, and evaluates agency program activities, objectives, policies, plans, guidelines, and standardized data systems for health care facilities planning and construction; (3) develops and maintains construction priority systems and develops project budget documents for the health care facilities construction program; (4) serves as the principal resource in providing leadership, guidance, and coordination of health care facilities engineering activities for the IHS Headquarters, Area offices, and I/T/Us; (5) monitors construction activities and the improvement, alteration, and repair of health care facilities; and (6) develops and evaluates technical standards and guidelines for health care facilities construction.

Division of Engineering Services (Dallas, Seattle) (GAB25). (1) Administers health care facilities engineering and construction projects for specified Area offices and administers the engineering and construction of certain projects for other Federal agencies through interagency agreements; (2) carries out management activities relating to IHS-owned and utilized health care facilities, including construction, contracting, realty, and leasing services; (3) serves as the source of engineering and contracting expertise for assigned programs/projects and other technical programmatic areas affecting the planning, design, alteration, leasing, and construction of IHS health care and sanitation facilities for Indian homes and communities; (4) assists in the development of Area office annual work plans, and in studies, investigations, surveys, audits, facilities planning, and technical standards development, related to IHS tribal health care facilities.

Section GAB–20, Office of Public Health—Delegations of Authority. All delegations and redelegations made to officials in the Office of Public Health that were in effect immediately prior to this reorganization, and that are consistent with this reorganization, shall continue in effect pending further redelegation.

This reorganization shall be effective on the date of signature.

Dated: October 13, 2000.

Michael H. Trujillo,

Director, Assistant Surgeon General.

[FR Doc. 00–28695 Filed 11–8–00; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Administrative Reporting Form (ARF) for the Women, Co-occurring Disorders and Violence Cooperative Agreement Program (Phase II)—New—The Women, Co-occurring Disorders, and Violence Study is funded by SAMHSA's Center for Substance Abuse Treatment (CSAT), Center for Substance Abuse Prevention (CSAP), and Center for Mental Health Services (CMHS) to produce knowledge on the development and effectiveness of integrated services for women with co-occurring mental health and substance abuse disorders who are victims of violence. Fourteen sites were funded in Phase I, and ten sites are expected to be funded in Phase II. During Phase I of the study (2 years), sites developed integrated service models. In Phase II, sites that successfully reapplied will test their interventions in a multi-site outcome study contrasting comprehensive, integrated, trauma-specific and Consumer/Survivor/Recovering Person (C/S/R) involved services to services as usual.

The Administrative Reporting Form (ARF) is a program monitoring instrument which is to be completed jointly by the project director, project staff members, and directors of participating organizations at each study site annually. The ARF collects information about the staffing and governance of each project, project accomplishments in the previous year, and specific project components.

Information collected with the ARF will be used in three ways. First, evaluators will use information from the ARF to describe the process of project

implementation at each of the study sites. This information will ultimately contribute to ''how-to'' knowledge products for communities attempting to integrate services. Second, site visiting teams will use information from the ARF in their assessments of the sites and will make recommendations to each site of how the site can improve its project. Third, descriptive information from the ARF will be used to characterize each site's intervention in terms of the players involved, the services provided, the manner in which those services are integrated, and the manner in which C/S/R persons are involved. These characterizations will inform the interpretation of the client-level data in the outcome study.

The estimated annual burden for these reporting requirements is summarized below.

Respondent type	Number of respondents	Responses/ respondent	Burden/ response (hours)	Total burden hours
Project Directors	10	1	10	100

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Stuart Shapiro, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: November 2, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–28609 Filed 11–8–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–75]

Notice of Submission of Proposed Information Collection to OMB; Rental Rehabilitation Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 11, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2506–0080) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Rental Rehabilitation Program.

OMB Approval Number: 2506–0080.

Form Numbers: HUD–40014, 40014B, 40021, 40070, 40018, 40018A, 40022.

Description of the Need for the Information and its Proposed Use: Although the Rental Rehabilitation Program (RRP) has been terminated, the statute originally authorizing the RRP still imposes data collection and reporting requirements upon HUD and grantees, State and local governments. The information will be used by HUD to account for program funds and to satisfy statutory reporting requirements.

Respondents: Federal Government, State, Local or Tribal Government.

Frequency of Submission: On occasion, annually and recordkeeping.

Reporting Burden:

Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
150		6		1.74		1,571

Total Estimated Burden Hours: 1,571.
Status: Reinstatement, with change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 2, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–28744 Filed 11–8–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–76]

Notice of Submission of Proposed Information Collection to OMB; Lease and Sale of HUD-Acquired Single Family Properties for the Homeless

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 11, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0412) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Lease and Sale of HUD-Acquired Single Family Properties for the Homeless.

OMB Approval Number: 2502–0412.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: The purpose of the program is to make available to applicants approved by HUD, through sale or lease, certain HUD-acquired single family properties for use in housing the homeless.

Respondents: Not-for-profit institutions, State, Local or Tribal Government.

Frequency of Submission: On occasion.

Reporting Burden:

Number of respondents	x	Frequency of response	x	Hours per Response	=	Burden hours
300		1		2		600

Total Estimated Burden Hours: 600.
Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 2, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–28745 Filed 11–8–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–77]

Notice of Submission of Proposed Information Collection to OMB; Doctoral Dissertation Research Grant Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 11, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2528–XXXX) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will

be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Doctoral Dissertation Research Grant Program.

OMB Approval Number: 2528–XXXX.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: Ph.D candidates will receive competitive grants to complete their doctoral dissertations on HUD-related topics.

Respondents: Individuals or household, not-for-profit institutions.

Frequency of Submission: Annually.

Reporting Burden:

Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
80		1.56		21.68		2,710

Total Estimated Burden Hours: 2,710.

Status: New.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 2, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–28746 Filed 11–8–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–45]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: November 9, 2000.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless.

Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: November 2, 2000.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Special Needs Assistance Programs.

[FR Doc. 00–28591 Filed 11–8–00; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Delaware & Lehigh National Heritage Corridor Commission Meeting

AGENCY: Department of Interior, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware & Lehigh National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

Meeting Date and Time: Friday, November 17, 2000, time 1:30 p.m. to 4:00 p.m.

Address: Greater Wilkes-Barre Chamber of Business & Industry, 2 Public Square, Wilkes-Barre, PA 18710.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware & Lehigh National Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988 and extended through Public Law 105–355, November 13, 1998.

FOR FURTHER INFORMATION CONTACT: C. Allen Sachse, Executive Director, Delaware & Lehigh National Heritage Corridor Commission, 10 E. Church Street, Room A–208, Bethlehem, PA 18018, (610) 861–9345.

Dated: November 4, 2000.

C. Allen Sachse,

Executive Director, Delaware & Lehigh National Heritage Corridor Commission.

[FR Doc. 00–28767 Filed 11–8–00; 8:45 am]

BILLING CODE 6820–PE–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–930–01–1990–00; CACA–35511]

Imperial Project Proposed Open Pit Gold Mine, Southeastern Imperial County, CA

AGENCY: Bureau of Land Management, Department of the Interior, El Centro Field Office, California Desert District.

ACTION: Notice of availability of Final Environmental Impact Statement/ Environmental Impact Report.

SUMMARY: In compliance with the National Environmental Policy Act (NEPA) of 1969 and 40 CFR 1503.4, this is notice that the Bureau of Land Management (BLM) and the County of Imperial have jointly published the Final Environmental Impact Statement/ Environmental Impact Report (Final EIS/EIR) on the proposed Imperial Project. The Bureau of Land Management (BLM) has prepared a Final EIS/EIR for the Imperial Project, proposed by Glamis Imperial Corporation is an open-pit gold mine on about 1,500 acres of public land. The project is located on BLM-administered public lands in an unincorporated area of southeastern Imperial County, California. The Final EIS/EIR contains the BLM preferred alternative.

Interested citizens are invited to review a copy of the Final EIS. The entire document will be available on the internet at http://www.ca.blm.gov/elcentro/imperial project. The document also is available by request to the BLM El Centro Field Office on CD–ROM. The CD–ROM is in Adobe Acrobat Reader format, and contains a free download of Acrobat Reader so it can be opened easily.

List of Libraries to Which Copies of the Final EIS/EIR Have Been Sent

A limited number of paper copies of the Final EIS are available, and a copy may be obtained by telephoning or writing the contact person listed below. Public reading copies are available at the following public libraries:

Arizona Western College Library, 9500 South Avenue 8 East, Yuma, AZ 85365
Holtville Library, 101 East Sixth Street, Holtville, CA 92250
BLM Library SC–322A, Bldg. 50, Denver Federal Center, Denver, CO 80225
Brawley Public Library, 400 Main Street, Brawley, CA 92227
Calexico City Library, 850 Encinas Avenue, Calexico, CA 92231
El Centro Public Library, 539 State Street, El Centro, CA 92243
Imperial County Library, 1647 West Main Street, El Centro, CA 92243
Imperial County Free Library, 939 West Main Street, El Centro, CA 92243
Imperial Valley College Library, 380 East Aten Road, Imperial, CA 92251
Imperial Public Library, 200 W. Ninth Street, Imperial, CA 92251
Meyer Memorial Library, 225 West Main Street, Calipatria, CA 92233
Palo Verde District Library, 125 W. Chanslor Way, Blythe, CA 92225
San Diego City Public Library—Clairemont, 2920 Burgener Boulevard, San Diego, CA 92110–1027
San Diego City Public Library—Logan Hills, 811 South 28th Street, San Diego, CA 92113–2498
San Diego City Pub. Library—Mission Hills, 925 West Washington Street, San Diego, CA 92103–1895
San Diego City Public Library—Oak Park, 2802 54th Street, San Diego, CA 92105–4941
San Diego City Public Library—Paradise Hills, 5922 Rancho Hills Drive, San Diego, CA 92139–3137
San Diego County Public Library, 2130 Arnold Way, Alpine, CA 91901–9499
San Diego County Public Library, 652 Palm Canyon Drive, Borrego Springs, CA 92004–0297
San Diego County Public Library, 1309 Camino del Mar, Del Mar, CA 92014–2693
San Diego County Public Library, 201 E. Douglas, El Cajon, CA 92020–4519
San Diego County Public Library, 8055 University Avenue, La Mesa, CA 91941–5097
San Diego County Public Library, 1406 Monicito Road, Ramona, CA 92065–2296
San Diego County Public Library, 700 Eucalyptus Avenue, Vista, CA 92084–6245
San Diego State University Library, 720 Heber Avenue, Calexico, CA 92231
Sierra Club, San Diego Chapter Office Library, 3820 Ray Street, San Diego, CA 92104–3623
Yuma County Library District, 350 South 3rd Avenue, Yuma, AZ 85364.

DATES: Public comments on the Final EIS/EIR will be accepted at the BLM El Centro Field Office until close of business on November 27, 2000. Unless specifically requested otherwise, names of commentators will be available to the public. BLM will be rendering a decision on the proposed Project no sooner than mid-December 2000.

FOR ADDITIONAL INFORMATION CONTACT: Comments on the Final EIS/EIR should be addressed to Mr. Glen R. Miller, BLM El Centro Field Office, 1661 S. 4th St., El Centro, CA 92243. To obtain copies of the Final EIS/EIR, contact Mr. Miller at (760) 337–4473. Fax requests may be sent to the attention of Mr. Glen Miller at (760) 337–4490. Requests also may be placed through email at: gmiller@ca.blm.gov. Please specify either CD–ROM or the specific volume(s) desired (see Supplemental Information below). Include your name, complete mailing address (no P.O. Boxes), and phone number on all requests.

SUPPLEMENTARY INFORMATION: A Draft EIS/EIR was published in November 1997, with a comment period closing on April 13, 1998. A Recirculated Supplement to the Draft EIS/EIR (SDEIS/EIR) was released in March 1999.

The Final EIS/EIR incorporates changes based on public comments received on the Draft EIS/EIR. The Final EIS/EIR contains the BLM Preferred Alternative, along with responses to written comments received during the 135-day public comment period for the Draft EIS/EIR. Both the Solicitor's Opinion on regulation of hardrock mining in the California desert, and a report of the task force of the Advisory Council on Historic Preservation are included as appendices to Volume I. The Final EIS/EIR has 3 volumes:

- Volume I—Main Text—(incorporates changes to DEIS/EIR, text and appendices)
- Volume II—Technical Appendices—(this is identical to the DEIS/EIR Volume II)
- Volume III—Public Comments to the Draft EIS/EIR and Responses to Comments—Written Comment Letters from Individuals/Petitions/Form Letters

Dated: October 27, 2000.

Greg Thomsen,

Field Manager.

[FR Doc. 00–27376 Filed 11–8–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–910–0777–26–241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council Meeting notice.

SUMMARY: This notice announces a meeting of the Arizona Resource Advisory Council (RAC). The meeting will be held on December 12, in Phoenix, Arizona. The RAC meeting will begin at 9:00 a.m. and will conclude at approximately 4:00 p.m. The agenda items to be covered include the review of the October 4, 2000 meeting minutes; BLM State Director's Update on legislation, regulations, and statewide planning efforts; Election of RAC Chair and Vice Chair; Draft National Off-Highway Vehicle Use Strategy Review and Discussion; Update on National Landscape Conservation System in Arizona, Report on 2001 Appropriations, Funding Allocation, and Arizona BLM Priorities; Update of State-Federal Land Exchange Agreement; Update on Las Cienegas National Conservation Area Legislation and Other Proposed Special Area Designations; Update Proposed Field Office Rangeland Resource Teams; Reports from BLM Field Office Managers; Reports by the Standards and Guidelines, Recreation and Public Relations, Wild Horse and Burro Working Groups; Reports from RAC members; and Discussion of future meetings. A public comment period will be provided at 11:30 a.m. on December 12, 2000, for any interested publics who wish to address the Council.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, (602) 417–9215.

Denise P. Merdith,

Arizona State Director.

[FR Doc. 00–28768 Filed 11–8–00; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of a new information collection titled Production and Royalty Reporting for Geothermal Resources (OMB Control Number 1010–NEW).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), we are soliciting comments on an information collection titled Production and Royalty Reporting for Geothermal Resources. We will submit an information collection request (ICR) regarding the collection of data supporting geothermal royalty payments to the Office of Management and Budget (OMB) for review and approval after this comment period closes. This information collection does not involve a standard report form or specific format. Rather, this information collection requires information that companies already use, and in the format that they use it, to calculate their royalty payments for geothermal resources.

DATES: Submit written comments on or before January 8, 2001.

ADDRESSES: Submit written comments to Connie Bartram, Acting Chief, Regulations and FOIA Team, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225.

Public Comment Procedure: Submit your comments to the office listed in the **ADDRESSES** section, or email your comments to us at *MRM.comments@mms.gov.* Include the title of the information collection and the OMB Control Number in the ''Attention'' line of your comment; also, include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your email, contact Ms. Bartram at (303) 231–3410, FAX (303) 231–3385. We will post all comments at *http://www.rmp.mms.gov* for public review.

Also, contact Ms. Bartram to review paper copies of the comments. The comments, including names and addresses of respondents, are available for public review during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the public record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and FOIA Team, phone (303) 231–3046, FAX (303) 231–3385, email *Dennis.C.Jones@mms.gov.* A copy of the ICR will be available to you without charge upon request.

SUPPLEMENTARY INFORMATION:

Title: Production and Royalty Reporting for Geothermal Resources.

OMB Control Number: 1010–NEW.

Bureau Form Number: N/A.

Abstract: The Secretary of the Department of the Interior (Secretary) is responsible under the Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001 *et seq.*), for the proper collection and disbursement of royalties due on Federal geothermal resources. We perform these royalty management functions on behalf of the Secretary by delegated authority. We are also designing new compliance and asset management processes to ensure that royalties are accurately and timely paid in the most cost effective manner possible. The goal of these processes is to reduce compliance verification from 6 years, our current audit cycle, to not more than 3 years. To achieve this goal, we find it necessary to collect supplemental production and valuation information.

When a company or individual enters into a geothermal lease with the United States Government, that company or individual agrees to pay a share (royalty) of the value of production to the United States. It is expressly understood that the Secretary may establish the values and minimum values of geothermal resources to compute royalties in accordance with applicable regulations. Royalty rates are specified in the lease document. Although specific lease language may vary, holders of Federal geothermal leases also agree to comply with reporting requirements prescribed by the Secretary's delegated official.

We currently collect only minimal information supporting geothermal royalty payments, usually on an as-needed, case-by-case basis at the time of audit. In fact, the only geothermal information that we routinely collect (from royalty reporters) at this time is the data reported on the Report of Sales and Royalty Remittance, Form MMS–2014. While this report in its revised form (see 65 FR 31598, May 18, 2000) will remain our principal document for the reporting and payment of geothermal royalties, it does not contain sufficient data to gauge the accuracy of the royalty payment. This is particularly true for those geothermal resources valued by the netback procedure and other indirect methods, which require multiple computational steps to derive the resource's value reported on the Form MMS–2014. Accordingly, we propose to collect supplemental information that supports the royalty payment. This information collection does not involve a standard report form or specific format. Rather, this information collection requires information that companies already use, and in the format that they use it, to calculate their royalty payment and value for geothermal resources.

Submission of this information will be mandatory. Proprietary information will be protected. There are no questions of a sensitive nature included in this information collection.

Frequency: Monthly.

Estimated Number and Description of Respondents: 20 geothermal lessees and operators.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 240 hours.

Estimated Annual Reporting and Recordkeeping ''Non-hour Cost'' Burden: N/A.

Comments: The Paperwork Reduction Act at 44 U.S.C. 3506(c)(2)(A) requires each agency ''to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of

automated collection techniques or other forms of information technology.

The Paperwork Reduction Act also requires agencies to estimate the total annual reporting ''non-hour cost'' burden to respondents or recordkeepers resulting from the collection of information. We have not identified non-hour cost burdens and need to know if there are other costs associated with the collection of this information for either total capital and startup cost components or annual operation, maintenance, and purchase of service components. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities.

Your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

The Paperwork Reduction Act provides that an agency shall not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

Dated: November 3, 2000.

Cathy J. Hamilton,

Acting Associate Director for Minerals Revenue Management.

[FR Doc. 00–28821 Filed 11–8–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of an information collection (OMB Control Number 1010–0074).

SUMMARY: To comply with the Paperwork Reduction Act of 1995, we are soliciting comments on an information collection titled, Coal Washing and Transportation Allowances. We will submit an information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval after this comment period closes.

DATES: Submit written comments on or before January 8, 2001.

ADDRESSES: Submit written comments to Connie Bartram, Acting Chief, Regulations and FOIA Team, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225.

PUBLIC COMMENT PROCEDURE: You may mail your comments to us (see **ADDRESSES** section), or you may email your comments to us at *MRM.comments@mms.gov.* Include the title of the information collection and the OMB Control Number in the ''Attention'' line of your comment; also, include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your email, contact Ms. Bartram at (303) 231–3410, FAX (303) 231–3385. We will post all comments at *http://www.rmp.mms.gov* for public review.

Also, contact Ms. Bartram to review paper copies of the comments. The comments, including names and addresses of respondents, are available for public review during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law.

There also may be circumstances in which we would withhold from the public record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Regulations and FOIA Team, phone (303) 231–3046, FAX (303) 231–3385, email *Dennis.C.Jones@mms.gov.* A copy of the ICR will be available to you without charge upon request.

SUPPLEMENTARY INFORMATION:

Title: Coal Washing and Transportation Allowances.

OMB Control Number: 1010–0074.

Bureau Form Number: n/a.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian Lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) is responsible for managing the production of minerals from Federal and Indian Lands and the OCS; for collecting royalties from lessees who produce minerals; and for distributing the funds collected in accordance with applicable laws. The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries.

The Secretary is required by various laws to manage the production of mineral resources on Indian lands, to collect the royalties due, and to distribute the funds in accordance with those laws. The product valuation and allowance determination process that we perform on behalf of the Secretary is essential to assure that the Indians receive payment on the full value of the minerals being removed. When a company or an individual enters into a lease to develop, mine, and dispose of coal deposits from Indian lands, that company or individual (the lessee) agrees to pay the gross proceeds received from the sale of production from the leased lands.

Royalty rates are specified in an Indian lease agreement. The lessee is required to report various kinds of information to the lessor relative to the transportation, processing, and commercial transactions associated with the disposition of the leased minerals. In order to determine whether the amount of royalty tendered represents the proper royalty due, it is necessary to establish the value of the coal being sold or otherwise disposed of in some other manner (for example, used by the lessee). Under some circumstances the lessee may be authorized to deduct certain costs in the calculation of royalties due from an Indian lease, and allowances may be granted from royalties to compensate the lessee for the reasonable actual cost of washing and transporting the royalty portion of coal.

Frequency: Annually.

Estimated Number and Description of Respondents: 1 company or individual entering into an Indian lease.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 2 hours.

Estimated Annual Reporting and Recordkeeping ''Non-hour Cost'' Burden: n/a.

Comments: The Paperwork Reduction Act at 44 U.S.C. 3506(c)(2)(A) requires each agency ''to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information.* * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The Paperwork Reduction Act also requires agencies to estimate the total annual reporting ''non-hour cost'' burden to respondents or recordkeepers resulting from the collection of information. We have not identified non-hour cost burdens and need to know if there are other costs associated with the collection of this information for either total capital and startup cost components or annual operation, maintenance, and purchase of service components. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities.

Your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

The Paperwork Reduction Act provides that an agency shall not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

Dated: November 3, 2000.

Cathy Hamilton,

Acting Associate Director for Minerals Revenue Management.

[FR Doc. 00–28822 Filed 11–8–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Boston Harbor Islands Advisory Council; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463) that the Boston Harbor Islands Advisory Council will meet on Wednesday, December 6, 2000. The meeting will convene at 4:00 p.m. at the New England Aquarium Education Center, Long Wharf, Boston, Massachusetts.

The Advisory Council was appointed by the Director of National Park Service pursuant to Public Law 104–333. The 28 members represent business, educational, cultural, and environmental entities; municipalities surrounding Boston Harbor; Boston Harbor advocates; and Native American interests. The purpose of the Council is to advise and make recommendations to the Boston Harbor Islands Partnership with respect to the development and implementation of a management plan and the operation of the Boston Harbor Islands National Recreation Area.

The Agenda for this meeting is as follows:

1. Approval of minutes from September 6, 2000
2. Discussion regarding the park operations ''report card''
3. Discussion on water transportation issues

The meeting is open to the public. Further information concerning Council meetings may be obtained from the Superintendent, Boston Harbor Islands. Interested persons may make oral/written presentations to the Council or file written statements. Such requests should be made at least seven days prior to the meeting to: Superintendent, Boston Harbor Islands NRA, 408 Atlantic Ave., Boston, MA, 02110, telephone (617) 223–8667.

Dated: November 1, 2000.

George E. Price, Jr.,

Superintendent, Boston Harbor Islands NRA.

[FR Doc. 00–28837 Filed 11–8–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, Criteria for Evaluating Water Management Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: To meet the requirements of the Central Valley Project Improvement Act (CVPIA) of 1992 and the Reclamation Reform Act of 1982, Reclamation developed and published the Criteria for Evaluating Water Conservation Plans, dated April 30, 1993. In September 1996, Reclamation revised the document and renamed it to Criteria for Evaluating Water Management Plans (Criteria). The Criteria were revised again in 1999.

The Cities of Avenal, Coalinga, and Huron, along with Broadview Water District and West Stanislaus Irrigation District, all have developed Water Management Plans (Plan) which Reclamation has evaluated and preliminarily determined to meet the requirements of the Criteria.

The 1999 Criteria were developed based on information provided during public scoping and review sessions held throughout Reclamation's Mid-Pacific (MP) Region. Reclamation uses these Criteria to evaluate the adequacy of all Plans developed by Central Valley Project contractors. The Criteria were developed and the Plans have been evaluated for the purpose of promoting the most efficient water use reasonably achievable by all MP Region contractors. Reclamation made a commitment (stated within the Criteria) to publish a notice of its draft determination of the adequacy of each contractor's Plan in the **Federal Register** to allow the public a minimum of 30 days to comment on its preliminary determinations.

DATES: All public comments must be received by December 11, 2000.

ADDRESSES: Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and

from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Please mail comments to Lucille Billingsley, Bureau of Reclamation, 2800 Cottage Way, MP–410, Sacramento CA 95825.

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any subsequent information, please contact Lucille Billingsley at the address above, or by telephone at (916) 978–5215 (TDD, 978–5608).

SUPPLEMENTARY INFORMATION: Under provision of Section 3405(e) of the CVPIA (Title 34 Pub. L. 102–575), ''The Secretary [of the Interior] shall establish and administer an office on Central Valley Project water conservation best management practices that shall * * * develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982.'' Also, according to Section 3405(e)(1), these criteria will be developed ''* * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices.''

The Criteria states that all parties (Contractors) that contract with Reclamation for water supplies (municipal and industrial contracts over 2,000 irrigable acre-feet and agricultural contracts over 2,000 irrigable acres) will prepare Plans which will be evaluated by Reclamation based on the following required information detailed in the sections listed below to develop, implement, monitor, and update their Plans. The sections are:

1. Description of the District.
2. Inventory of Water Resources.
3. Best Management Practices (BMPs) for Agricultural Contractors.
4. BMP's for Urban Contractors.
5. Plan Implementation.
6. Exemption Process.
7. Regional Criteria.
8. Five Year Revisions.

Public comment on Reclamation's preliminary (i.e., draft) determination of the Cities of Avenal, Coalinga, and Huron, along with Broadview Water District and West Stanislaus Irrigation District, are invited at this time. A copy of these Plans will be available for review at Reclamation's MP Regional Office located in Sacramento, California, and MP's South-Central California Area Office located in Fresno, California.

Dated: November 1, 2000.

Charles B. Johnson,

Acting Regional Resources Manager, Mid-Pacific Region.

[FR Doc. 00–28769 Filed 11–8–00; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–706 (Review)]

Canned Pineapple Fruit From Thailand

AGENCY: United States International Trade Commission.

ACTION: Scheduling of a full five-year review concerning the antidumping duty order on canned pineapple fruit from Thailand.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty order on canned pineapple fruit from Thailand would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: November 1, 2000.

FOR FURTHER INFORMATION CONTACT: D.J. Na (202–708–4727), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—On September 1, 2000, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review pursuant to section 751(c)(5) of the Act should proceed (65 FR 55047, September 12, 2000). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's web site.

Participation in the review and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the review will be placed in the nonpublic record on February 21, 2001, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on March 13, 2001, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before March 5, 2001. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on March 8, 2001, at the U.S. International Trade

Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is March 2, 2001. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is March 22, 2001; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before March 22, 2001. On April 16, 2001, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before April 18, 2001, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Dated: Issued: November 2, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–28725 Filed 11–08–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–868–870 (Final)]

Steel Wire Rope from China, India, and Malaysia

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigations Nos. 731–TA–868–870 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China, India, and Malaysia of steel wire rope, provided for in subheadings 7312.10.60 and 7312.10.90 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: November 2, 2000.

FOR FURTHER INFORMATION CONTACT: Jeff Clark (202–205–3195), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that imports of steel wire rope from China and India are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b).[2] The investigations were requested in petitions filed on March 1, 2000, by the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers.

Participation in the Investigations and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained

[1] For purposes of these investigations, Commerce has defined the subject merchandise as ''Steel wire rope, which encompasses ropes, cables, and cordage of iron or carbon or stainless steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass-plated wire.''

[2] Commerce has made a preliminary determination of sales at not LTFV with respect to the subject imports from Malaysia. Pending Commerce's final determination of sales at LTFV, the final phase of the Commission's antidumping investigation with respect to Malaysia is also being scheduled, for purposes of efficiency.

by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on February 6, 2001, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on February 21, 2001, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before February 14, 2001. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on February 16, 2001, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is February 13, 2001. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is February 28, 2001; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before February 28, 2001. On March 15, 2001, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before March 19, 2001, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: November 3, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–28729 Filed 11–8–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Withdrawal

As set fourth in the **Federal Register** (FR Doc. 99–26605) Vol. 64, No. 197 at page 55489, dated October 13, 1999, Fort Dodge Laboratories, Inc., 141 E. Riverside Drive, Fort Dodge, Iowa 50501, made application to the Drug Enforcement Administration to be registered as an importer of pentobarbital (2270).

One registered bulk manufacturer of pentobarbital requested a hearing to deny the proposed registration of Fort Dodge Laboratories, Inc. Fort Dodge Laboratories, Inc. requested by letter that its application be withdrawn. Therefore, Fort Dodge Laboratories, Inc.'s, application to import pentobarbital is hereby withdrawn.

Dated: October 30, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–28696 Filed 11–8–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Registration

By Notice dated August 22, 2000, and published in the **Federal Register** on September 6, 2000, (65 FR 54067), ISP Freetown Fine Chemicals, Inc., 238 South Main Street, Assonet, Massachusetts 02702, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The firm plans to import the phenylacetone to manufacture amphetamine.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of IPS Freetown Fine Chemicals, Inc., is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated ISP Freetown Fine Chemicals, Inc. to ensure that the company's registration is consistent with the public interest. This investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: October 18, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–28697 Filed 11–8–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2096–00; AG Order No. 2330–2000]

RIN 1115 AE–26

Extension of Designation of Burundi Under the Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The designation of Burundi under the Temporary Protected Status (TPS) program expired on November 2, 2000. This notice extends the Attorney General's designation of Burundi under the TPS program for 12 months until November 2, 2001, and sets forth procedures necessary for nationals of Burundi (or aliens having no nationality who last habitually resided in Burundi) with TPS to register for the additional 12-month period. Eligible nationals of Burundi (or aliens having no nationality who last habitually resided in Burundi) may re-register for TPS and an extension of employment authorization. Re-registration is limited to persons who registered during the initial registration period, which ended on November 3, 1998, who registered under the redesignation, which ended November 2, 2000, or who registered under the late initial registration provisions. Nationals of Burundi (or aliens having no nationality who last habitually resided in Burundi) who are eligible for late initial registration may register for TPS during this extension.

EFFECTIVE DATES: The extension of the TPS designation for Burundi is effective November 2, 2000, and will remain in effect until November 2, 2001. The 30-day re-registration period begins November 9, 2000, and will remain in effect until December 11, 2000.

FOR FURTHER INFORMATION CONTACT: Rebecca K. Peters, Residence and Status Services Branch, Adjudications, Immigration and Naturalization Service, Room 3214, 425 I Street, NW, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Is the Statutory Authority for the Attorney General To Extend Burundi's TSP Designation Under the TPS Program?

Section 244(b)(3)(A) of the Immigration and Nationality Act (Act) states that at least 60 days before the end of an extension or a designation, the Attorney General must review conditions in the foreign state for which the designation is in effect. 8 U.S.C. 1254a(b)(3)(A). If the Attorney General determines that the foreign state continues to meet the conditions for designation, the period of designation is extended pursuant to section 244(b)(3)(C) of the Act. 8 U.S.C. 1254a(b)(3)(C). With respect to Burundi, such an extension makes TPS available only to persons who have been continuously physically present since November 9, 1999, and have continuously resided in the United States from November 9, 1999.

Why Did the Attorney General Decide To Extend the TPS Designation for Burundi?

On November 4, 1997, the Attorney General designated Burundi for TPS for a period of 12 months (62 FR 59735). Since that date, the Departments of State and Justice have annually reviewed conditions within Burundi, with the Attorney General extending the designation in 1998 (63 FR 59334), and extending the designation and redesignating Burundi in 1999 (64 FR 61123).

The Departments of State and Justice have recently reviewed conditions within Burundi. The review resulted in a consensus that a further 12-month extension is warranted. The State Department, in a recent memorandum, explained the reasons for extension, stating: ''While negotiations yielded a framework for peace in August 2000, no cease-fire is in effect. Considerable ethnic violence and deep divisions over the distributions of power continue. In addition, the widening war in [Democratic Republic of Congo] has effectively pulled in Burundi * * *. Burundi is insecure throughout, and the prospects for real peace in the near future are uncertain.'' Based on this year's review, the Attorney General finds that conditions are Burundi warrant a 12-month extension of the designation of Burundi under section 244(b)(3)(C) of the Act. 8 U.S.C. 1254a(b)(3)(C). Because the Attorney General did not determine, at least 60 days before the end of the designation period, that the conditions in Burundi no longer warrant TPS, the designation was automatically extended six months by operation of statute on November 2, 2000. 8 U.S.C. 1254a(b)(3)(C). On the basis of the most recent findings, however, the Attorney General finds that the TPS designation for Burundi should be extended for an additional 12-month period, rather than the six month period resulting from the automatic extension.

If I Currently Have TPS Through the Burundi TPS Program, Do I Still Need To Register for an Extension and How Do I Do So?

If you have already been granted TPS through the Burundi TPS Program, your TPS expired on November 2, 2000. Persons previously granted TPS under the Burundi program may apply for an extension by filing a Form I–821, Application for Temporary Protected Status, without the fee, during the re-registration period that begins November 9, 2000 and ends December 11, 2000. Additionally, you must file a Form I–765, Application for Employment Authorization. To determine whether or not you must submit the one-hundred dollar ($100) filing fee with the Form I–765, see the chart below.

If . . .	Then . . .
You are applying for employment authorization until November 2, 2001	You must complete and file the Form I–765, Application for Employment Authorization, with the one-hundred dollar ($100) fee.
You have employment authorization until November 2, 2001, or do not require employment authorization.	You must complete and file the Form I–765, Application for Employment Authorization, with no fee.
You are applying for employment authorization and are requesting a fee waiver.	You must complete and file Form I–765 and a fee waiver request and affidavit (and any other information) in accordance with 8 CFR 244.20.

To re-register for TPS, you must also include two identification photographs (1½″ × 1½″).

Where Must I File for an Extension of TPS?

Nationals of Burundi (or aliens who have no nationality and who last habitually resided in Burundi) seeking to register for the extension of TPS must submit an application and accompanying materials to the Immigration and Naturalization Service (Service) district office that has jurisdiction over the applicant's place of residence.

When Must I File for an Extension of TPS?

The 30-day re-registration period begins November 9, 2000, and will remain in effect until December 11, 2000.

How Does an Application for TPS Affect My Application for Asylum and Other Immigration Benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit. A national of Burundi (or alien having no nationality who last habitually resided in Burundi) who is otherwise eligible for TPS and has applied for, or plans to apply for, asylum, but who has not yet been granted asylum or withholding of removal, may also apply for TPS. Denial of an application for asylum or any other immigration benefit does not affect an applicant's ability to register for TPS, although the grounds of denial may also be grounds of denial for TPS. For example, a person who has been convicted of a particularly serious crime is not eligible for asylum or TPS. 8 U.S.C. 1158(b)(2); 8 U.S.C. 1254a(c)(2)(B).

Does This Extension Allow Nationals of Burdundi (or Aliens Having No Nationality Who Last Habitually Resided in Burdundi) Who Entered the United States After November 9, 1999, To File for TPS?

No. This is a notice of an extension of the TPS designation for Burundi, not a notice of redesignation for Burundi for TPS. An extension of TPS does not change the required dates of continuous residence and continuous physical presence in the United States and does not expand TPS availability to include nationals of Burundi (or aliens having no nationality who last habitually resided in Burundi) who arrived in the United States after the date of the most recent redesignation, in this case, November 9, 1999.

Is Late Initial Registration Possible?

Yes. In addition to timely re-registration, late initial registration is possible for some persons from Burundi under 8 CFR 244.2(f)(2). To apply for late initial registration an applicant must:

(1) Be a national of Burundi (or an alien who has no nationality and who last habitually resided in Burundi);

(2) Have been continuously physically present in the United States since November 9, 1999;

(3) Have continuously resided in the United States since November 9, 1999; and

(4) Be admissible as an immigrant, except as otherwise provided under section 244(c)(2)(A) of the Act, and not ineligible under section 244(c)(2)(B) of the Act.

Additionally, the applicant must be able to demonstrate that, during the registration period from November 9, 1999, through November 2, 2000, he or she:

(1) Was a nonimmigrant or had been granted voluntary departure status or any relief from removal,

(2) Had an application for change of status adjustment of status, asylum, voluntary departure or any relief from removal or change of status pending or subject to further review or appeal,

(3) Was a parolee or had a pending request for reparole, or

(4) Was the spouse or child of an alien currently eligible to be a TPS registrant. 8 CFR 244.2(f)(2).

An applicant for late initial registration must register no later than sixty (60) days from the expiration or termination of the conditions described above. 8 CFR 244.2(g).

Notice of Extension of Designation of Burundi Under the TPS Program

By the authority vested in me as Attorney General under section 244(b)(3)(A) and (C), and (b)(1) of the Act, I have consulted with the appropriate Government agencies concerning whether the conditions under which Burundi was designated for TPS continue to exist. As a result, I determine that the conditions for the original designation of TPS for Burundi continue to be met. 8 U.S.C. 1254a(b)(3)(A). Accordingly, I order as follows:

(1) The designation of Burundi under section 244(b) of the Act is extended for an additional 12-month period from November 2, 2000, until November 2, 2001. 8 U.S.C. 1254a(b)(3)(C).

(2) I estimate that there are approximately 1,000 nationals of Burundi (or aliens who have no nationality and who last habitually resided in Burundi) who have been granted TPS and who are eligible for re-registration.

(3) In order to be eligible for TPS during the period from November 2, 2000, to November 2, 2001, a national of Burundi (or an alien who has no nationality and who last habitually resided in Burundi) who has already received a grant of TPS under the Burundi TPS designation or who is eligible to file under the late filing provision of 8 CFR 244.2(f)(2) must register for TPS by filing a new Application for Temporary Protected Status, Form I–821, along with an Application for Employment Authorization, Form I–765, within the 30-day period beginning on November 9, 2000 and ending on December 11, 2000. Late registration will be allowed only for good cause shown pursuant to 8 CFR 244.17(c).

(4) Pursuant to section 244(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before November 2, 2001, the designation of Burundi under the TPS program to determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination, including the basis for the determination, will be published in the **Federal Register**. 8 U.S.C. 1254a(b)(3)(A).

(5) Information concerning the TPS program for nationals of Burundi (or aliens who have no nationality and who last habitually resided in Burundi) will be available at local Service offices upon publication of this notice.

Dated: November 2, 2000.

Janet Reno,

Attorney General.

[FR Doc. 00–28749 Filed 11–8–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2095–00; AG Order No. 2332–2000]

RIN 1115–AE 26

Extension of Designation of Sierra Leone Under the Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The designation of Sierra Leone under the Temporary Protected Status (TPS) program expired on November 2, 2000. This notice extends the Attorney General's designation of

Sierra Leone under the TPS program for 12 months until November 2, 2001, and sets forth procedures necessary for nationals of Sierra Leone (or aliens having no nationality who last habitually resided in Sierra Leone) with TPS to register for the additional 12-month period. Eligible nationals of Sierra Leone (or aliens having no nationality who last habitually resided in Sierra Leone) may re-register for TPS and an extension of employment authorization. Re-registration is limited to persons who registered during the initial registration period, which ended on November 3, 1998, who registered under the redesignation, which ended November 2, 2000, or who registered under the late initial registration provisions. Nationals of Sierra Leone (or aliens having no nationality who last habitually resided in Sierra Leone) who are eligible for late initial registration may register for TPS during this extension.

EFFECTIVE DATES: The extension of the TPS designation for Sierra Leone is effective November 2, 2000, and will remain in effect until November 2, 2001. The 30-day re-registration period begins November 9, 2000, and will remain in effect until December 11, 2000.

FOR FURTHER INFORMATION CONTACT: Rebecca K. Peters, Residence and Status Services Branch, Adjudications, Immigration and Naturalization Service, Room 3214, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Is the Statutory Authority for the Attorney General To Extend Sierra Leone's TPS Designation Under the TPS Program?

Section 244(b)(3)(A) of the Immigration and Nationality Act (Act) states that at least 60 days before the end of an extension or a designation, the Attorney General must review conditions in the foreign state for which the designation is in effect. 8 U.S.C. 1254a(b)(3)(A). If the Attorney General determines that the foreign state continues to meet the conditions for designation, the period of designation is extended pursuant to section 244(b)(3)(C) of the Act. 8 U.S.C. 12254a(b)(3)(C). With respect to Sierra Leone, such an extension makes TPS available only to persons who have been continuously physically present since November 9, 1999, and have continuously resided in the United States from November 9, 1999.

Why Did the Attorney General Decide To Extend the TPS Designation for Sierra Leone?

On November 4, 1997, the Attorney General designated Sierra Leone for TPS for a period of 12 months (62 FR 59736). Since that date, the Departments of State and Justice have annually reviewed conditions within Sierra Leone, with the Attorney General extending the designation in 1998 (63 FR 59336), and extending the designation and redesignating Sierra Leone in 1999 (64 FR 61125). The Departments of State and Justice have recently reviewed conditions within Sierra Leone. The review resulted in a consensus that a further 12-month extension is warranted. The reasons for extension, as explained in a State Department memorandum, are as follows: ''While the Lome Peace Accord was signed in July 1999 rebels did not comply with disarmament and demobilization commitments. Active conflict resumed in May 2000 between the Revolutionary United Front (RUF) and government forces supported by the United Nations Mission to Sierra Leone (UNAMSIL) peacekeepers. Harassment, abuse, and atrocities committed against unarmed civilians by the RUF rebels, as well as by undisciplined elements of pro-government forces continue.'' Based on this year's review, the Attorney General finds that conditions in Sierra Leone warrant a 12-month extension of the designation of Sierra Leone under section 244(b)(3)(C) of the Act. 8 U.S.C. 1254a(b)(3)(C). Because the Attorney General did not determine, at least 60 days before the end of the designation period, that the conditions in Sierra Leone no longer warrant TPS, the designation was automatically extended six months by operation of statute on November 2, 2000. 8 U.S.C. 1254a(b)(3)(C). On the basis of the most recent findings, however, the Attorney General finds that the TPS designation for Sierra Leone should be extended for an additional 12-month period, rather than the six month period resulting from the automatic extension.

If I Currently Have TPS Through the Sierra Leone TPS Program, Do I Still Need To Register for an Extension and How Do I Do So?

If you have already been granted TPS through the Sierra Leone TPS Program, your TPS expired on November 2, 2000. Persons previously granted TPS under the Sierra Leone program may apply for an extension by filing a Form I–821, Application for Temporary Protected Status, without the fee, during the re-registration period that begins November 9, 2000 and ends December 11, 2000. Additionally, you must file a Form I–765, Application for Employment Authorization. To determine whether or not you must submit the one-hundred dollar ($100) filing fee with the Form I–765, see the chart below.

If . . .	Then . . .
You are applying for employment authorization until November 2, 2001	You must complete and file the Form I–765, Application for Employment Authorization, with the one-hundred dollar ($100) fee.
You have employment authorization until November 2, 2001, or do not require employment authorization.	You must complete and file the Form I–765, Application for Employment Authorization, with no fee.
You are applying for employment authorization and are requesting a fee waiver.	You must complete and file Form I–765 and a fee waiver request and affidavit (and any other information) in accordance with 8 CFR 244.20.

To re-register for TPS, you must also include two identification photographs (1½ × 1½).

Where Must I File for an Extension of TPS?

Nationals of Sierra Leone (or aliens who have no nationality and who last habitually resided in Sierra Leone) seeking to register for the extension of TPS must submit an application and accompanying materials to the Immigration and Naturalization Service (Service) district office that has jurisdiction over the applicant's place of residence.

When Must I File for an Extension of TPS?

The 30-day re-registration period begins November 9, 2000, and will

remain in effect until December 11, 2000.

How Does an Application for TPS Affect My Application for Asylum or Other Immigration Benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit. A national of Sierra Leone (or alien having no nationality who last habitually resided in Sierra Leone) who is otherwise eligible for TPS and has applied for, or plans to apply for, asylum, but who has not yet been granted asylum or withholding of removal, may also apply for TPS. Denial of an application for asylum or any other immigration benefit does not affect an applicant's ability to register for TPS, although the grounds of denial may also be grounds of denial for TPS. For example, a person who has been convicted of a particularly serious crime is not eligible for asylum or TPS. 8 U.S.C. 1158(b)(2); 8 U.S.C. 1254a(c)(2)(B).

Does This Extension Allow Nationals of Sierra Leone (or Aliens Having No Nationality Who Last Habitually Resided in Sierra Leone) Who Entered the United States After November 9, 1999, To File for TPS?

No. This is a notice of an extension of the TPS designation for Sierra Leone, not a notice of redesignation for Sierra Leone for TPS. An extension of TPS does not change the required dates of continuous residence and continuous physical presence in the United States and does not expand TPS availability to include nationals of Sierra Leone (or aliens having no nationality who last habitually resided in Sierra Leone) who arrived in the United States after the date of the most recent redesignation, in this case, November 9, 1999.

Is Late Initial Registration Possible?

Yes. In addition to timely re-registration, late initial registration is possible for some persons from Sierra Leone under 8 CFR 244.2(f)(2). To apply for late initial registration an applicant must:

(1) be a national of Sierra Leone (or an alien who has no nationality and who last habitually resided in Sierra Leone);

(2) have been continuously physically present in the United States since November 9, 1999;

(3) have continuously resided in the United States since November 9, 1999; and,

(4) be admissible as an immigrant, except as otherwise provided under section 244(c)(2)(A) of the Act, and not ineligible under section 244(c)(2)(B) of the Act.

Additionally, the applicant must be able to demonstrate that, during the registration period from November 9, 1999, through November 2, 2000, he or she:

(1) was a nonimmigrant or had been granted voluntary departure status or any relief from removal,

(2) had an application for change of status, adjustment of status, asylum, voluntary departure or any relief from removal or change of status pending or subject to further review or appeal,

(3) was a parolee or had a pending request for reparole, or

(4) was the spouse or child of an alien currently eligible to be a TPS registrant. 8 CFR 244.2(f)(2).

An applicant for late initial registration must register no later than sixty (60) days from the expiration or termination of the conditions described above. 8 CFR 244.2(g).

Notice of Extension of Designation of Sierra Leone Under the TPS Program

By the authority vested in me as Attorney General under sections 244(b)(3)(A) and (C), and (b)(1) of the Act, I have consulted with the appropriate Government agencies concerning whether the conditions under which Sierra Leone was designated for TPS continue to exist. As a result, I determine that the conditions for the original designation of TPS for Sierra Leone continue to be met. 8 U.S.C. 1254a(b)(3)(A). Accordingly, I order as follows:

(1) The designation of Sierra Leone under section 244(b) of the Act is extended for an additional 12-month period from November 2, 2000, until November 2, 2001. 8 U.S.C. 1254a(b)(3)(C).

(2) I estimate that there are approximately 5,000 nationals of Sierra Leone (or aliens who have no nationality and who last habitually resided in Sierra Leone) who have been granted TPS and who are eligible for re-registration.

(3) In order to be eligible for TPS during the period from November 2, 2000, to November 2, 2001, a national of Sierra Leone (or an alien who has no nationality and who last habitually resided in Sierra Leone) who has already received a grant of TPS under the Sierra Leone TPS designation or who is eligible to file under the late filing provision of 8 CFR 244.2(f)(2) must register for TPS by filing a new Application for Temporary Protected Status, Form I–821, along with an Application for Employment Authorization, Form I–765, within the 30-day period beginning on November 9, 2000 and ending on December 11, 2000. Late registration will be allowed only for good cause shown pursuant to 8 CFR 244.17(c).

(4) Pursuant to section 244(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before November 2, 2001, the designation of Sierra Leone under the TPS program to determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination, including the basis for the determination, will be published in the **Federal Register**. 8 U.S.C. 1254a(b)(3)(A).

(5) Information concerning the TPS program for nationals of Sierra Leone (or aliens who have no nationality and who last habitually resided in Sierra Leone) will be available at local Service offices upon publication of this notice.

Dated: November 2, 2000.

Janet Reno,

Attorney General.

[FR Doc. 00–28747 Filed 11–8–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2094–00; AG Order No. 2331–2000]

RIN 1115–AE 26

Extension of Designation of Sudan Under the Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The designation of Sudan under the Temporary Protected Status (TPS) program expired on November 2, 2000. This notice extends the Attorney General's designation of Sudan under the TPS program for 12 months until November 2, 2001, and sets forth procedures necessary for nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) with TPS to register for the additional 12-month period. Eligible nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) may re-register for TPS and an extension of employment authorization. Re-registration is limited to persons who registered during the initial registration period, which ended on November 3, 1998, who registered under the redesignation, which ended November 2, 2000, or who registered under the late initial registration provisions. Nationals of Sudan (or aliens having no

nationality and who last habitually resided in Sudan) who are eligible for late initial registration may register for TPS during this extension.

EFFECTIVE DATES: The extension of the TPS designation for Sudan is effective November 2, 2000, and will remain in effect until November 2, 2001. The 30-day re-registration period begins November 9, 2000, and will remain in effect until December 11, 2000.

FOR FURTHER INFORMATION CONTACT: Rebecca K. Peters, Residence and Status Services Branch, Adjudications, Immigration and Naturalization Service, Room 3214, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Is the Statutory Authority for the Attorney General To Extend Sudan's TPS Designation Under the TPS Program?

Section 244(b)(3)(A) of the Immigration and Nationality Act (Act) states that at least 60 days before the end of an extension or a designation, the Attorney General must review conditions in the foreign state for which the designation is in effect. 8 U.S.C. 1254a(b)(3)(A). If the Attorney General determines that the foreign state continues to meet the conditions for designation, the period of designation is extended pursuant to section 244(b)(3)(C) of the Act. 8 U.S.C. 1254a(b)(3)(c). With respect to Sudan, such an extension makes TPS available only to persons who have been continuously physically present since November 9, 1999, and have continuously resided in the United States from November 9, 1999.

Why Did the Attorney General Decide To Extend the TPS Designation for Sudan?

On November 4, 1997, the Attorney General designated Sudan for TPS for a period of 12 months (62 FR 59737). Since that date, the Departments of State and Justice have annually reviewed conditions within Sudan, resulting in the Attorney General extending the designation in 1998 (63 FR 59337), and extending the designation and redesignating Sudan in 1999 (64 FR 61128). The Departments of State and Justice have recently reviewed conditions within Sudan. The review resulted in a consensus that a further 12-month extension is warranted. The reasons for extension, as explained in a State Department memorandum, are as follows: ''Civil war continues in Sudan, causing extensive displacement of populations and violations of human rights. Insecurity and forced population relocations and insecurity have destroyed most of the indigenous trading and production systems. The risk of famine continues as fighting impedes relief efforts.'' Based on this year's review, the Attorney General finds that conditions in Sudan warrant a 12-month extension of the designation of Sudan under section 244(b)(3)(C) of the Act. 8 U.S.C. 1254a(b)(3)(C). Because the Attorney General did not determine, at least 60 days before the end of the designation period, that the conditions in Sudan no longer warrant TPS, the designation was automatically extended six months by operation of statute on November 2, 2000. 8 U.S.C. 1254a(b)(3)(C). On the basis of the most recent findings, the Attorney General finds that the TPS designation for Sudan should be extended for an additional 12-month period, rather than the six month period resulting from the automatic extension.

If I Currently Have TPS Through the Sudan TPS Program, Do I Still Need To Register for an Extension and How Do I Do So?

If you have already been granted TPS through the Sudan TPS Program, your TPS expired on November 2, 2000. Persons previously granted TPS under the Sudan program may apply for an extension by filing a Form I–821, Application for Temporary Protected Status, without the fee, during the re-registration period that begins November 9, 2000 and ends December 11, 2000. Additionally, you must file a Form I–765, Application for Employment Authorization. To determine whether or not you must submit the one-hundred dollar ($100) filing fee with the Form I–765, see the chart below.

If . . .	Then . . .
You are applying for employment authorization until November 2, 2001	You must complete and file the Form I–765, Application for Employment Authorization, with the one-hundred dollar ($100) fee.
You have employment authorization until November 2, 2001, or do not require employment authorization.	You must complete and file the Form I–765, Application for Employment Authorization, with no fee.
You are applying for employment authorization and are requesting a fee waiver.	You must complete and file Form I–765 and a fee waiver request and affidavit (and any other information) in accordance with 8 CFR 244.20.

To re-register for TPS, you must also include two identification photographs (1½′ × 1½′).

Where Must I File for an Extension of TPS?

Nationals of Sudan (or aliens who have no nationality and who last habitually resided in Sudan) seeking to register for the extension of TPS must submit an application and accompanying materials to the Immigration and Naturalization Service (Service) district office that has jurisdiction over the applicant's place of residence.

When Must I File for an Extension of TPS?

The 30-day re-registration period begins November 9, 2000, and will remain in effect until December 11, 2000.

How Does an Application for TPS Affect My Application for Asylum or Other Immigration Benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit. A national of Sudan (or alien having no nationality who last habitually resided in Sudan) who is otherwise eligible for TPS and has applied for, or plans to apply for, asylum, but who has not yet been granted asylum or withholding of removal, may also apply for TPS. Denial of an application for asylum or any other immigration benefit does not affect an applicant's ability to register for TPS, although the grounds of denial may also be grounds of denial for TPS. For example, a person who has been convicted of a particularly serious crime is no eligible for asylum or TPS. 8 U.S.C. 1158(b)(2); 8 U.S.C. 1254a(c)(2)(B).

Does This Extension Allow Nationals of Sudan (or Aliens Having No Nationality Who Last Habitually Resided in Sudan) Who Entered the United States After November 9, 1999, To File for TPS?

No. This is a notice of an extension of the TPS designation for Sudan, not a notice of redesignation for Sudan for TPS. An extension of TPS does not change the required dates of continuous residence and continuous physical presence in the United States and does not expand TPS availability to include nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) who arrived in the United States after the date of the most recent redesignation, in this case, November 9, 1999.

Is Late Initial Registration Possible?

Yes. In addition to timely re-registration, late initial registration is possible for some persons from Sudan under 8 CFR 244.2(f)(2). To apply for late initial registration an applicant must:

(1) be a national of Sudan (or an alien who has no nationality and who last habitually resided in Sudan);

(2) have been continuously physically present in the United States since November 9, 1999;

(3) have continuously resided in the United States since November 9, 1999; and,

(4) be admissible as an immigrant, except as provided under section 244(c)(2)(A) of the Act, and not ineligible under section 244(c)(2)(B) of the Act.

Additionally, the applicant must be able to demonstrate that, during the registration period from November 9, 1999, through November 2, 2000, he or she:

(1) was a nonimmigrant or had been granted voluntary departure status or any relief from removal,

(2) had an application for change of status, adjustment of status, asylum, voluntary departure or any relief from pending or subject to further review or appeal,

(3) was a parolee or had a pending request for reparole, or

(4) was the spouse or child of an alien currently eligible to be a TPS registrant. 8 CFR 244.2(f)(2).

An applicant for late initial registration must register no later than sixty (60) days from the expiration or termination of conditions described above. 8 CFR 244.2(g).

Notice of Extension of Designation of Sudan Under the TPS Program

By the authority vested in me as Attorney General under sections 244(b)(3)(A) and (C), and (b)(1) of the Act, I have consulted with the appropriate Government agencies concerning whether the conditions under which Sudan was designated for TPS continue to exist. As a result, I determine that the conditions for the designation of TPS for Sudan continue to be met. 8 U.S.C. 1254a(b)(3)(A). Accordingly, I order as follows:

(1) The designation of Sudan under section 244(b) of the Act is extended for an additional 12-month period from November 2, 2000, until November 2, 2001. 8 U.S.C. 1254a(b)(3)(C).

(2) I estimate that there are approximately 1,500 nationals of Sudan (or aliens who have no nationality and who last habitually resided in Sudan) who have been granted TPS and who are eligible for re-registration.

(3) In order to be eligible for TPS during the period from November 2, 2000, to November 2, 2001, a national of Sudan (or alien who has no nationality and who last habitually resided in Sudan) who has already received a grant of TPS under the Sudan TPS designation or who is eligible to file under the late filing provisions of 8 CFR 244.2(f)(2), must register for TPS by filing a new Application for Temporary Protected Status, Form I–821, along with an Application for Employment Authorization, Form I–765, within the 30-day period beginning on November 9, 2000 and ending on December 11, 2000. Late registration will be allowed only for good cause shown pursuant to 8 CFR 244.17(c).

(4) Pursuant to section 244(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before November 2, 2001, the designation of Sudan under the TPS program to determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination, including the basis for the determination, will be published in the **Federal Register** 8 U.S.C. 1254a(b)(3)(A).

(5) Information concerning the TPS program for nationals of Sudan (or aliens who have no nationality and who last habitually resided in Sudan) will be available at local Service offices upon publication of this notice.

Dated: November 2, 2000.

Janet Reno,

Attorney General.

[FR Doc. 00–28748 Filed 11–8–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 1, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 693–4127 or by e-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 693–4129 or by e-mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Uniform Health Insurance Claim Form—UB–92.

OMB Number: 1215–0176.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal

Government; and individuals or households.

Frequency: On occasion.

Number of Respondents: 166,622.

Number of Annual Responses: 166,622.

Estimated Time Per Response: 10 minutes.

Total Burden Hours: 28,538.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Office of Workers Compensation Programs (OWCP) requests hospitals providing medical services to beneficiaries covered under the Federal Employee Compensation Act and the Federal Black Lung Benefits Act to bill on the standard form UB–92. This form identifies the injured worker, the name of the services provided, the conditions being treated and billed amounts. This information is required by OWCP to enable reimbursement for covered services.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–28797 Filed 11–8–00; 8:45 am]

BILLING CODE 4510–47–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101 of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor (Secretary) may allow the modification of the application of a mandatory safety standard to a mine if the Secretary determines either that an alternate method exists at a specific mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard at a specific mine will result in a diminution of safety to the affected miners.

Final decisions on these petitions are based upon the petitioner's statements, comments and information submitted by interested persons, and a field investigation of the conditions at the mine. MSHA, as designee of the Secretary, has granted or partially granted the requests for modification listed below. In some instances, the decisions are conditioned upon compliance with stipulations stated in the decision. The term ''FR Notice'' appears in the list of affirmative decisions below. The term refers to the **Federal Register** volume and page where MSHA published a notice of the filing of the petition for modification.

FOR FURTHER INFORMATION: Petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations, and Variances, MSHA, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Contact Barbara Barron at 703–235–1910.

Dated: November 1, 2000.

Carol J. Jones,

Director, Office of Standards, Regulations and Variances.

Affirmative Decisions on Petitions for Modification

Docket No.: M–2000–003–C.
FR Notice: 65 FR 10563.
Petitioner: Big Ridge, Inc.
Regulation Affected: 30 CFR 75.1700.
Summary of Findings: Petitioner's proposal is to plug and mine in close proximity to, or through oil and gas wells and to notify the District Manager or designee: prior to mining within 300 feet of the well; in sufficient time to have an opportunity to have a representative present; and when a specific plan is developed for mining through each well. This is considered an acceptable alternative method for the Big Ridge Mine. MSHA grants the petition for modification for mining through or near (whenever the safety barrier diameter is reduced to a distance less than the District Manager would approve pursuant to Section 75.1700) plugged oil and gas wells penetrating the Illinois No. 5 seam and other mineable coal seams at the Big Ridge Mine with conditions.

Docket No.: M–2000–004–C.
FR Notice: 65 FR 10563.
Petitioner: Aracoma Coal Company.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to use a 2,400 volt continuous mining system inby the last open crosscut and within 150 feet from pillar workings using the specific terms and conditions listed in the petition for modification. This is considered an acceptable alternative method for the Aracoma Alma Mine. MSHA grants the petition for modification for the Aracoma Alma Mine with conditions.

Docket No.: M–2000–006–C.
FR Notice: 65 FR 10563.
Petitioner: Marrowbone Development Company (Eastern Mingo Coal Company).
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to use 2,400-volt AC continuous mining equipment. This is considered an acceptable alternative method for the Drautz Mine. MSHA grants the petition for modification for the Drautz Mine with conditions.

Docket No.: M–2000–011–C.
FR Notice: 65 FR 10564.
Petitioner: Alex Energy, Inc.
Regulation Affected: 30 CFR 75.350.
Summary of Findings: Petitioner's proposal is to use air coursed through the belt haulage entry to ventilate active working places by installing a carbon monoxide monitoring system as an early warning fire detection system in all belt entries used to carry intake air to a working place. This is considered an acceptable alternative method for the Jerry Fork Eagle Mine. MSHA grants the petition for modification for the Jerry Fork Eagle Mine with conditions.

Docket No.: M–2000–016–C.
FR Notice: 65 FR 16966.
Petitioner: Elk Run Coal Company.
Regulation Affected: 30 CFR 75.350.
Summary of Findings: Petitioner's proposal is to use air coursed through the conveyor belt entry at a velocity of at least 50 feet per minute to ventilate active working places installing a low-level carbon monoxide system as an early warning fire detection system in all belt entries used to course intake air to a working place. This is considered an acceptable alternative method for the White Knight Mine. MSHA grants the petition for modification for the White Knight Mine with conditions.

Docket No.: M–2000–017–C.
FR Notice: 65 FR 16966.
Petitioner: FKZ Coal, Inc.
Regulation Affected: 30 CFR 75.1202–1(a).
Summary of Findings: Petitioner's proposal is to conduct mine surveys and revise and supplement mine maps annually instead of every 6 months as required, and to update maps daily by hand notations, and conduct subsequent surveys prior to commencing retreat mining and whenever a drilling program under 30 CFR 75.388 or plan for mining into inaccessible areas under 30 CFR 75.389 is required. This is considered an acceptable alternative method for the No. 1 Slope Mine. MSHA grants the petition for modification for the No. 1 Slope Mine with conditions.

Docket No.: M–2000–023–C.
FR Notice: 65 FR 19928.

Petitioner: Crystal Fuels Company.
Regulation Affected: 30 CFR 75.1103–4.
Summary of Findings: Petitioner's proposal is to install a low-level carbon monoxide detection system as an early warning fire detection system in all belt entries used to ventilate active working places instead of using monitoring systems that identify each belt flight. This is considered an acceptable alternative method for the No. 1 Mine. MSHA grants the petition for modification for the No. 1 Mine with conditions.

Docket No.: M–2000–027–C.
FR Notice: 65 FR 31611.
Petitioner: Hopkins County Coal, LLC.
Regulation Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal is to use a spring-loaded device with specific fastening characteristics instead of a padlock to secure plugs and electrical type connectors to batteries and to permissible mobile powered equipment, to prevent the battery plugs from accidentally separating from the receptacle during normal operation of battery equipment. This is considered an acceptable alternative method for the Island Mine. MSHA grants the petition for modification for the use of permanently installed spring-loaded locking devices in lieu of padlocks on battery plugs at the Island Mine with conditions.

Docket No.: M–2000–032–C.
FR Notice: 65 FR 31611.
Petitioner: Sidney Coal Company, Inc.
Regulation Affected: 30 CFR 75.350.
Summary of Findings: Petitioner's proposal is to use air coursed through belt haulage entries to ventilate active working places by installing a low-level carbon monoxide detection system as an early warning fire detection system in all belt entries used to course intake air to a working place. This is considered an acceptable alternative method for the Rockhouse Energy Mining Company, Mine No. 1. MSHA grants the petition for modification for the Rockhouse Energy Mining Company, Mine No. 1 with conditions.

Docket No.: M–2000–035–C.
FR Notice: 65 FR 31612.
Petitioner: West Ridge Resources, Inc.
Regulation Affected: 30 CFR 75.352.
Summary of Findings: Petitioner's proposal is to use the belt entry as a return air course during two-entry longwall development, and as an intake during longwall extraction to ensure adequate ventilation to dilute and render harmless any methane or other noxious gases that may accumulate. This is considered an acceptable alternative method for the West Ridge Mine. MSHA grants the petition for modification for the West Ridge Mine with conditions.

Docket No.: M–2000–042–C.
FR Notice: 65 FR 31610.
Petitioner: Marfork Coal Company, Inc.
Regulation Affected: 30 CFR 75.350.
Summary of Findings: Petitioner's proposal is to use an automatic fire detection system based on carbon monoxide monitoring of the underground belt conveyor entries and to install a low-level carbon monoxide monitoring system as an early warning fire detection system in all belt entries used to course intake air to a working place. This is considered an acceptable alternative method for the Brushy Eagle Mine. MSHA grants the petition for modification for the Brushy Eagle Mine with conditions.

Docket No.: M–2000–044–C.
FR Notice: 65 FR 31610.
Petitioner: Appalachian Eagle, Inc.
Regulation Affected: 30 CFR 75.350.
Summary of Findings: Petitioner's proposal is to use a carbon monoxide monitoring system to monitor belt air used in the face. The petitioner proposes to use a carbon monoxide monitoring system as an early warning fire detection system in all belt entries used to course intake air to a working place. This is considered an acceptable alternative method for the Mine No. 1. MSHA grants the petition for modification for the Mine No. 1 with conditions.

Docket No.: M–2000–056–C.
FR Notice: 65 FR 40142.
Petitioner: Dominion Coal Corporation.
Regulation Affected: 30 CFR 77.214(a).
Summary of Findings: Petitioner's proposal is to cover abandoned mine openings with coarse refuse material for the Dominion Mine No. 22, MSHA Site ID #1211–VA5–0335–01. The petitioner proposes to construct a refuse bench fill in abandoned mine openings using the specific plans and procedures listed in the petition for modification. This is considered an acceptable alternative method for the Dominion Mine No. 22. MSHA grants the petition for modification for the Dominion Mine No. 22 with conditions.

Docket No.: M–1999–007–C.
FR Notice: 64 FR 16760.
Petitioner: Energy Fuels Coal, Inc.
Regulation Affected: 30 CFR 75.701.
Summary of Findings: Petitioner's proposal is to use a 135 kw/169 kva, 480-volt diesel powered generator set to move equipment in and out of the mine and operate a roof bolter for roof rehabilitation in remote areas of the mine. This is considered an acceptable alternative method for the South Field Mine. MSHA grants the petition for modification for the 480-volt, three-phase, 135kw Diesel Powered Generator (DPG) set supplying power to a 169 KVA three-phase transformer and three-phase 480-volt and 995-volt power circuits with conditions.

Docket No.: M–1999–012–C.
FR Notice: 64 FR 16760.
Petitioner: Canyon Fuel Company, LLC.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to use high-voltage (2,400 volt) cables on continuous miner sections. This is considered an acceptable alternative method for the SUFCO Mine. MSHA grants the petition for modification for the SUFCO Mine with conditions.

Docket No.: M–1999–021–C.
FR Notice: 64 FR 23874.
Petitioner: Jim Walter Resources, Inc.
Regulation Affected: 30 CFR 75.364(b)(2).
Summary of Findings: Petitioner's proposal is to establish evaluation points inby and outby the return air course and have a certified person examine the evaluation points for methane and oxygen concentrations and the volume of air and record the results in a book maintained on the surface of the mine. This is considered an acceptable alternative method for the No. 4 Mine. MSHA grants the petition for modification for the examination of approximately 2,000 feet of unsafe-to-travel air course between Shafts 4–1 and 4–2 (Southern Area) and the Shaft 4–5 (Northern Area) which ventilates the A Panel off of 3 East mine seals at the No. 4 Mine with conditions.

Docket No.: M–1999–026–C.
FR Notice: 64 FR 25518.
Petitioner: West Ridge Resources, Inc.
Regulation Affected: 30 CFR 75.350.
Summary of Findings: Petitioner's proposal is to use two-entry longwall development, use the belt entry as a return air course during longwall development and as an intake during longwall extraction, to ensure an adequate quantity of ventilation to dilute and render harmless methane or noxious gases that may accumulate. This is considered an acceptable alternative method for the West Ridge Mine. MSHA grants the petition for modification for the West Ridge Mine with conditions.

Docket No.: M–1999–028–C.
FR Notice: 64 FR 25518.
Petitioner: Peabody Coal Company.

Regulation Affected: 30 CFR 75.364(b)(4).

Summary of Findings: Petitioner's proposal is to establish evaluation points to monitor its bleeder system due to hazardous conditions that hinder continued travel to conduct examinations, and conduct daily examinations at various evaluation points, have a certified person check for methane and oxygen and the volume of air and record the results in a book kept on the surface of the mine. This is considered an acceptable alternative method for the Camp No. 11 Mine. MSHA grants the petition for modification for the continuous monitoring using intrinsically safe sensors installed as part of the mine's AMS and daily evaluation of air, entering the worked out longwall panels and approximately 5600 feet of bleeder/return air course which ventilates the inaccessible 9th North mine seals at the Camp No. 11 Mine with conditions.

Docket No.: M–1999–039–C.
FR Notice: 64 FR 32553.
Petitioner: Canyon Fuel Company, LLC.
Regulation Affected: 30 CFR 75.701.
Summary of Findings: Petitioner's proposal is use a 420 KW/525 KVA, 480-volt diesel-powered generator system to move equipment in and out of the mine and perform minor mining activities in the mine, and to conduct proper testing procedures training for all operators prior to using the generator system. This is considered an acceptable alternative method for the SUFCO Mine. MSHA grants the petition for modification for the 480-volt, three-phase, 420KW/525KVA diesel-powered generator (DPG) set supplying power to a three-phase transformer and three-phase 480-volt and 995-volt power circuits at the SUFCO Mine with conditions.

Docket No.: M–1999–040–C.
FR Notice: 64 FR 32553.
Petitioner: Canyon Fuel Company, LLC.
Regulation Affected: 30 CFR 75.901.
Summary of Findings: Petitioner's proposal is use a 420 KW/525 KVA, 480-volt diesel-powered generator system to move equipment in and out of the mine and perform minor mining activities in the mine, and to conduct proper testing procedures training for all operators prior to using the generator system. This is considered an acceptable alternative method for the SUFCO Mine. MSHA grants the petition for modification for the 480-volt, three-phase, 420KW/525KVA diesel-powered generator (DPG) set supplying power to a three-phase transformer and three-phase 480-volt and 995-volt power circuits at the SUFCO Mine with conditions.

Docket No.: M–1999–053–C.
FR Notice: 64 FR 41139.
Petitioner: West Ridge Resources, Inc.
Regulation Affected: 30 CFR 75.1002–1(a).
Summary of Findings: Petitioner's proposal is to use a nominal voltage of longwall power circuits not to exceed 2,400 volts to supply power to the permissible longwall mining equipment. This is considered an acceptable alternative method for the West Ridge Mine. MSHA grants the petition for modification for the West Ridge Mine with conditions.

Docket No.: M–1999–070–C.
FR Notice: 64 FR 49247.
Petitioner: RAG Emerald Resources Corporation (Originally Cyprus Emerald Resources Corporation).
Regulation Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal is to use trailing cables greater than 500 feet in length for mining equipment taken in by the last open crosscut with the cable length not to exceed 1,000 feet. This is considered an acceptable alternative method for the Emerald No. 1 Mine. MSHA grants the petition for modification for the Emerald No. 1 Mine with conditions.

Docket No.: M–1999–076–C.
FR Notice: 64 FR 55493.
Petitioner: Consolidation Coal Company.
Regulation Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal is to use trailing cables greater than 500 feet in length on face equipment during longwall panel development with the cable length not to exceed 1,000 feet. This is considered an acceptable alternative method for the Shoemaker Mine. MSHA grants the petition for modification for the Shoemaker Mine with conditions.

Docket No.: M–1999–078–C.
FR Notice: 64 FR 55493.
Petitioner: Consolidation Coal Company.
Regulation Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal is to use trailing cables greater than 500 feet in length on face equipment during longwall panel development. This is considered an acceptable alternative method for the Dilworth Mine. MSHA grants the petition for modification for the Dilworth Mine with conditions.

Docket No.: M–1999–090–C.
FR Notice: 64 FR 57662.
Petitioner: Canterbury Coal Company.
Regulation Affected: 30 CFR 75.350.
Summary of Findings: Petitioner's proposal is to ventilate working sections. The petitioner proposes to install a carbon monoxide monitoring system as an early warning fire detection system in all belt entries where air coursed through the belt entry is used to ventilate active working places. This is considered an acceptable alternative method for the DiAnne Mine. MSHA grants the petition for modification for the DiAnne Mine with conditions.

Docket No.: M–1999–092–C.
FR Notice: 64 FR 57662.
Petitioner: Marfork Coal Company, Inc.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to use 4,160 volt longwall face equipment using specific terms and conditions listed in the petition for modification. This is considered an acceptable alternative method for the Brushy Eagle Mine. MSHA grants the petition for modification for the Brushy Eagle Mine with conditions.

Docket No.: M–2000–096–C.
FR Notice: 64 FR 57663.
Petitioner: Canyon Fuel Company, LLC.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to use a nominal voltage of longwall power circuits not to exceed 2,400 volts to supply power to permissible longwall equipment. This is considered an acceptable alternative method for the Dugout Canyon Mine. MSHA grants the petition for modification for the Dugout Canyon Mine with conditions.

Docket No.: M–1999–101–C.
FR Notice: 64 FR 57663.
Petitioner: RAG Emerald Resources Corporation.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to use 4,160 volt high-voltage longwall equipment. This is considered an acceptable alternative method for the Emerald Mine No. 1. MSHA grants the petition for modification for the Emerald Mine No. 1 with conditions.

Docket No.: M–1999–108–C.
FR Notice: 64 FR 70054.
Petitioner: Energy West Mining Company.
Regulation Affected: 30 CFR 75.1909(b)(6).
Summary of Findings: Petitioner's proposal is to use an alternative method for service brakes on diesel powered graders. The petitioner proposes to install a speedometer on diesel graders in order to limit the speed to 25 miles per hour when operating graders in an underground coal mine or on the surface of an underground coal mine,

and train all miners who operate the graders in the proper procedures for lowering the blade in order to restrict the speed and stop the grader, in proper gear selection for grading, and in the proper speed for grading. This is considered an acceptable alternative method for the Deer Creek Mine. MSHA grants the petition for modification for the Deer Creek Mine with conditions.

Docket No.: M–1999–126–C.
FR Notice: 64 FR 70732.
Petitioner: Mingo Logan Coal Company.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to use a high-voltage cable within 150 feet of pillar workings to power a 2,400 VAC longwall mining machine. This is considered an acceptable alternative method for the Mountaineer Alma-A Mine. MSHA grants the petition for modification for the Mountaineer Alma-A Mine with conditions.

Docket No.: M–1999–136–C.
FR Notice: 65 FR 1914.
Petitioner: Twentymile Coal Company.
Regulation Affected: 30 CFR 75.1909(b)(6).
Summary of Findings: Petitioner's proposal is to use an alternative method of compliance for service brakes on diesel-powered graders. The petitioner proposes to equip the diesel-powered graders with devices to limit the speed for operating the graders to 10 miles per hour, and train each miner who operates the grader on the proper techniques for lowering the blade in order to restrict the speed and stop the grader. This is considered an acceptable alternative method for the Foidel Creek Mine. MSHA grants the petition for modification for the Foidel Creek Mine with conditions.

Docket No.: M–1999–139–C.
FR Notice: 65 FR 1914.
Petitioner: RAG Shoshone Coal Corporation.
Regulation Affected: 30 CFR 75.1909(b)(6).
Summary of Findings: Petitioner's proposal is to use an alternative method of compliance for service brakes on diesel-powered graders. The petitioner proposes to equip the diesel graders with devices to limit the speed for operating the graders to 10 miles per hour, and train each miner who operates the grader on the proper techniques for lowering the blade in order to restrict the speed and stop the grader. This is considered an acceptable alternative method for the Shoshone No. 1 Mine. MSHA grants the petition for modification for the Shoshone No. 1 Mine with conditions.

Docket No.: M–1999–143–C.
FR Notice: 65 FR 5700.
Petitioner: Consol of Kentucky, Inc.
Regulation Affected: 30 CFR 75.701.
Summary of Findings: Petitioner's proposal is to use a diesel-generator source of low and medium voltage, three-phase electrical power during transportation of certain mobile equipment underground. This is considered an acceptable alternative method for the Rhoades Branch H–4 Mine. MSHA grants the petition for modification for the Rhoades Branch H–4 Mine with conditions.

Docket No.: M–1999–144–C.
FR Notice: 65 FR 5700.
Petitioner: Consol of Kentucky, Inc.
Regulation Affected: 30 CFR 75.901.
Summary of Findings: Petitioner's proposal is to use a diesel-generator source of low and medium voltage, three-phase electrical power during transportation of certain mobile equipment underground. This is considered an acceptable alternative method for the Rhoades Branch H–4 Mine. MSHA grants the petition for modification for the Rhoades Branch H–4 Mine with conditions.

Docket No.: M–1999–145–C.
FR Notice: 65 FR 5700.
Petitioner: Consol of Kentucky, Inc.
Regulation Affected: 30 CFR 75.1101–8.
Summary of Findings: Petitioner's proposal is to use a single line of automatic sprinklers for its fire protection system on main and secondary belt conveyors. This is considered an acceptable alternative method for the Rhoades Branch H–4 Mine. MSHA grants the petition for modification for the Rhoades Branch H–4 Mine with conditions.

Docket No.: M–1999–148–C.
FR Notice: 65 FR 5701.
Petitioner: Consolidation Coal Company.
Regulation Affected: 30 CFR 75.364(b)(2).
Summary of Findings: Petitioner's proposal is to establish evaluation check points in certain area of the return air course due to deteriorating roof conditions and have a certified person test for methane and the quantity of air at the check points on a weekly basis. This is considered an acceptable alternative method for the Shoemaker Mine. MSHA grants the petition for modification for the Shoemaker Mine with conditions.

Docket No.: M–1998–056–C.
Petitioner: 63 FR 44291.
Regulation Affected: 30 CFR 75.901(a).
Summary of Findings: Petitioner's proposal is to use a portable diesel powered generator to move electrically powered mining– equipment from one section of the mine to another and incorporate a ground fault system for the power circuits that would deenergize mining equipment if a phase to frame fault occurs. This is considered an acceptable alternative method for the Foidel Creek Mine. MSHA grants the petition for modification for 480-volt, three-phase, 320KW/400KVA Diesel Powered Generator (DPG) set supplying power to a three-phase transformer and three-phase 480-volt, and 995-volt power circuits at the Foidel Creek Mine with conditions.

Docket No.: M–1998–100–C.
FR Notice: 64 FR 2520.
Petitioner: Cyprus Plateau Mining Corporation.
Regulation Affected: 30 CFR 75.804(a).
Summary of Findings: Petitioner's proposal is to: use specially designed high-voltage cables on longwall equipment that would comply with the existing standard, or use type CABLE/BICC Anaconda brand 5KV, 3/C type SHD+GC; Amercable Tiger Brand, 3/C, 5KV, type SHD–CGC; Pirelli 5KV, 3/C, type SHD–CENTER–GC; or similar 5,000 volt cable with center ground check conductor, manufactured to the ICEA Standard S–75–381 for type SHD, three-conductor cables; use MSHA accepted as flame-resistant cable; use a ground check conductor not smaller than a No. 16 AWG stranded conductor; use cable construction of symmetrical 3/C, 3/G, and 1/GC; train all qualified electrical personnel who perform maintenance on the longwall on the installation, splicing, repair, and permissibility requirements of high-voltage cables; and submit proposed revisions for part 48 training to the District Manager within 60 days after the proposed decision and order becomes final. This is considered an acceptable alternative method for the Willow Creek Mine. MSHA grants the petition for modification for the use of high-voltage longwall cables at the Willow Creek Mine with conditions.

Docket No.: M–2000–005–M.
FR Notice: 65 FR 40142.
Petitioner: Frontier-Kemper Constructors, Inc.
Regulation Affected: 30 CFR 57.9360.
Summary of Findings: Petitioner's proposal is to install and use safety platforms instead of shelter-holes mounted along the rib at regular intervals throughout the ASARCO Mineral Creek Water Diversion Tunnel using the specific construction procedures outlined in the petition for modification. This is considered an acceptable alternative method for the

ASARCO Ray Complex Mine. MSHA grants the petition for modification for the ASARCO Ray Complex Mine with conditions.

Docket No.: M–1999–004–M.
FR Notice: 64 FR 32554.
Petitioner: Dally Slate Company and American Bangor Slate & Stone.
Regulation Affected: 30 CFR 57.19007.
Summary of Findings: Petitioner's proposal is to use a stand-by engineer, instead of a mechanical device, to prevent overtravel or overspeed in the event the hoist operating engineer has a sudden health problem that impairs his/her ability to operate the hoist. This is considered an acceptable alternative method for the Dally 2-Pit Diamond Mill Doney Mine and the American Bangor Slate & Stone Mine. MSHA grants the petition for modification for the Dally 2-Pit Diamond Mill Doney Mine and the American Bangor Slate & Stone Mine with conditions.

Docket No.: M–1999–005–M.
FR Notice: 64 FR 32554.
Petitioner: Williams & Sons Slate & Tile, Inc.
Regulation Affected: 30 CFR 57.19007.
Summary of Findings: Petitioner's proposal is to use a stand-by engineer, instead of a mechanical device, to prevent overtravel or overspeed in the event the hoist operating engineer has a sudden health problem that impairs his/her ability to operate the hoist. This is considered an acceptable alternative method for the Sreebs Slate & Stone Co., Inc. Mine. MSHA grants the petition for modification for the Sreebs Slate & Stone Co., Inc. Mine with conditions.

Docket No.: 1999–015–M.
FR Notice: 64 FR 55494.
Petitioner: Lyons Salt Company.
Regulation Affected: 30 CFR 49.6(a)(1).
Summary of Findings: Petitioner's proposal is to maintain six (6) approved apparatuses at its mine-rescue station rather than twelve as required by the standard. The four members of the Kansas Mine Rescue Association (Association) (of which Lyons Salt is one) have an agreement that Association members will respond to mine emergencies at other member mines, which means there are 24 mine-rescue apparatuses available for mine emergency. The association member mines each have their own rescue stations, which are equipped with six complete mine-rescue apparatuses. These apparatuses could be used immediately or transported to another mine within 30 minutes to 2 hours ground travel. This is considered an acceptable alternative method for the Lyons Salt Company Mine. MSHA grants the petition for modification for the Lyons Salt Company Mine with conditions. This is an underground salt mine using conventional room-and-pillar mining methods. The petitioner amended this petition on February 21, 2000, to change the standard for which it was seeking modification from 30 CFR 49.6(a)(4) to 30 CFR 49.6(a)(1).

Docket No.: M–1999–016–M.
FR Notice: 64 FR 55494.
Petitioner: Hutchinson Salt Company.
Regulation Affected: 30 CFR 49.6(a)(1).
Summary of Findings: Petitioner's proposal is to maintain six (6) approved apparatuses at its mine-rescue station rather than twelve as required by the standard. The four members of the Kansas Mine Rescue Association (Association) (of which Hutchinson Salt is one) have an agreement that Association members will respond to mine emergencies at other member mines, which means there are 24 mine-rescue apparatuses available for mine emergency. The association member mines each have their own rescue stations, which are equipped with six complete mine-rescue apparatuses. These apparatuses could be used immediately or transported to another mine within 30 minutes to 2 hours ground travel. This is considered an acceptable alternative method for the Hutchinson Salt Company Mine. MSHA grants the petition for modification for the Hutchinson Salt Company Mine with conditions. This is an underground salt mine using conventional room-and-pillar mining methods. The petitioner amended this petition on February 22, 2000, to change the standard for which it was seeking modification from 30 CFR 49.6(a)(4) to 30 CFR 49.6(a)(1).

Docket No.: M–1999–17–M.
FR Notice: 64 FR 55494.
Petitioner: G–P Gypsum Corporation.
Regulation Affected: 30 CFR 49.6(a)(1).
Summary of Findings: Petitioner's proposal is to maintain six (6) approved apparatuses at its mine-rescue station rather than twelve as required by the standard. The four members of the Kansas Mine Rescue Association (Association) (of which G–P Gypsum corporation is one) have an agreement that Association members will respond to mine emergencies at other member mines, which means there are 24 mine-rescue apparatuses available for mine emergency. The association member mines each have their own rescue stations, which are equipped with six complete mine-rescue apparatuses. These apparatuses could be used immediately or transported to another mine within 30 minutes to 2 hours ground travel. This is considered an acceptable alternative method for the Blue Rapids Mine & Mill. MSHA grants the petition for modification for the Blue Rapids Mine & Mill with conditions. This is an underground salt mine using conventional room-and-pillar mining methods. The petitioner amended this petition on February 10, 2000, to change the standard for which it was seeking modification from 30 CFR 49.6(a)(4) to 30 CFR 49.6(a)(1).

Docket No.: M–1999–019–M.
FR Notice: 64 FR 55495.
Petitioner: Independent Salt Company.
Regulation Affected: 30 CFR 49.6(a)(1).
Summary of Findings: Petitioner's proposal is to maintain six (6) approved apparatuses at its mine-rescue station rather than twelve as required by the standard. The four members of the Kansas Mine Rescue Association (Association) (of which Independent Salt Company is one) have an agreement that Association members will respond to mine emergencies at other member mines, which means there are 24 mine-rescue apparatuses available for mine emergency. The association member mines each have their own rescue stations, which are equipped with six complete mine-rescue apparatuses. These apparatuses could be used immediately or transported to another mine within 30 minutes to 2 hours ground travel. This is considered an acceptable alternative method for the Independent Salt Company Mine. MSHA grants the petition for modification for the Independent Salt Company Mine with conditions. This is an underground salt mine using conventional room-and-pillar mining methods. The petitioner amended this petition on February 22, 2000, to change the standard for which it was seeking modification from 30 CFR 49.6(a)(4) to 30 CFR 49.6(a)(1).

[FR Doc. 00–28816 Filed 11–8–00; 8:45 am]
BILLING CODE 4510–43–U

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Astronomical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings of the Special Emphasis Panel in Astronomical Sciences (1186):

Date and Time: November 30–December 1, 2000, 9 a.m.–5 p.m.; December 7–8, 2000, 9 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Blvd, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. James Breckinridge, Program Manager, Advanced Technologies and Instrumentation, Division of Astronomical Sciences, National Science Foundation, 4201 Wilson Boulevard, Room 1045, Arlington, VA 22230. Telephone: (703) 292–4892.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Advanced Technologies and Instrumentation Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 3 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 6, 2000.

Karen J. York,

Commiittee Management Office.

[FR Doc. 00–28782 Filed 11–8; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (1189).

Date and Time: December 19–20, 2000; 8 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Leon Esterowitz, Program Director, Biomedical Engineering and Research to Aid Persons with Disabilities, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 292–8320.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals and proposals received under the Initiative on Sensing and Imaging Technologies for Multi-Use Applications Program Announcement (Announcement Number NSF 00–106), as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and person information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–28783 Filed 11–8–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Biological Infrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Biological Infrastructure (#1215).

Date and Time: November 30–December 1, 2000, 8:30 a.m.–5 p.m.

Place: National Science Foundation at 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Gerald Selzer, Program Director Biological Instrumentation and Instrument Development, National Science Foundation, Rm. 615, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone (703) 292–8470.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposal for acquisition of Biological Instrumentation and Instrument Development for the Instrument Development for Biological Research (IDBR) Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–28786 Filed 11–8–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemical and Transport Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Chemical and Transport Systems (1190).

Date and Time: December 19, 2000; 8:30 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Chuan F. Chen, Program Director, Fluid, Dynamics & Hydraulics, Division of Chemical & Transport Systems, 4201 Wilson Boulevard, Room 525, Arlington, VA 22230. Telephone: (703) 292–8371.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY 2000 Sensing & Imaging Panel of proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–28785 Filed 11–8–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Computing—Communications Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Computing—Communications Research (1192).

Date/Time: November 16–17, 2000; 8 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Roger Ziemer, Communications Research Panel, CISE/CCR, Room 1145, National Science Foundation, 4201 Wilson Blvd., Arlington, Virginia 22230. (703) 292–8918.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate COM CAREER proposals as a part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information

concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–28789 Filed 11–8–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation (1194).

Date and Time: December 5, 6, and 7, 2000, 8 a.m.–5:30 p.m.

Type of Meeting: Closed.

Contact Person: Dr. Delcie Durham, Dr. George Hazelrigg, Dr. Kamalakar Rajurkar, and Dr. Ronald Rardin, Program Directors, DMII, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 292–8330.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Unsolicited proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters that are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–28780 Filed 11–8–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Engineering Education and Centers; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Engineering Education and Centers (#173).

Date and Time: January 8–9, 2001 8:30 AM–5:30 PM.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Persons: Ms. Mary Poats, Program Manager, Engineering Education and Centers Division, National Science Foundation, Room 585, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–8380.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Research Experiences for Undergraduates Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–28788 Filed 11–8–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Human Resource Development (#1199).

Date and Time: December 7–8, 2000 from 8:30 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 380, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Victor Santiago, Program Director, Human Resource Development Division, Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 292–4673.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate the Historically Black Colleges and Universities proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–28781 Filed 11–8–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Mathematical Sciences (1204).

Date and Time: November 30, 2000 through December 2, 2000; 8:30 a.m. until 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Alvin Thaler, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 292–4863.

Purpose of Meeting: To provide advice and recommendations concerning proposal submitted to NSF for financial support.

Agenda: To review and evaluate proposals concerning the Foundations Panel Meeting, as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–28784 Filed 11–8–00; 8:45 am]

BILLING CODE 7555–01–M

National Science Foundation

NSB Public Service Award Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: NSB Public Service Award Committee (5195).

Date and Time: Tuesday, November 28, 2000, 11 a.m.–1 p.m. EST (teleconference meeting).

Place; National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Mrs. Susan E. Fannoney, Executive Secretary, Room 1220, National

Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–8096.

Purpose of Meeting: To provide advice and recommendations in the selection of the NSB Public Service Award recipient.

Agenda: To review and evaluate nominations as part of the selection process for awards.

Reason for Closing: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under 5 U.S.C. 552b(c) and (6) of the Government in the Sunshine Act.

Dated: November 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–28787 Filed 11–8–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing

The National Transportation Safety Board will convene a public hearing beginning at 9:30 a.m., local time on Wednesday, November 15–16, 2000, at the NTSB Board Room and Conference Center, 429 L'Enfant Plaza, S.W., Washington, D.C. 20024 concerning Pipeline Safety. For more information, contact Joseph Kris, NTSB Office of Pipeline and Hazardous Materials Safety at (202) 314–6539 or Keith Holloway, NTSB Office of Public Affairs at (202) 314–6100.

Individuals requesting specific accommodation should contact Mrs. Carolyn Dargan at (202) 314–6305 by Thursday, November 9, 2000.

Dated: November 6, 2000.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 00–28836 Filed 11–8–00; 8:45 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–245]

Northeast Nuclear Energy Company; Millstone Nuclear Power Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. DPR–21 issued to Northeast Nuclear Energy Company, the licensee, for the Millstone Nuclear Power Station, Unit 1 (MP1), a permanently shutdown nuclear reactor facility located in Waterford, Connecticut.

Environmental Assessment

Identification of Proposed Action

The proposed action would revise certain License Conditions, delete other License Conditions, and delete some Confirmatory Orders to reflect the permanently shutdown and defueled status of the plant. The proposed action is in accordance with the licensee's application for amendment dated June 6, 2000.

The Need for the Proposed Action

Currently, the MP1 Operating License (DPR–21) is written to apply to an operating facility. MP1 is permanently shutdown and defueled; therefore, the licensee determined that changes to certain License Conditions and Confirmatory Orders were necessary to reflect the permanently shutdown and defueled status of the plant.

Environmental Impact of the Proposed Action

The Commission has completed its evaluation of the proposed amendment to the MP1 License and concludes that issuance of the proposed amendment will not have an environmental impact. The proposed changes to the License Conditions and Orders are consistent with the regulations and regulatory guidance for a permanently shutdown and defueled facility and are considered editorial and administrative in nature. The licensee does not propose any disposal or relocation of nuclear fuel or any changes to structures, systems, components, or site boundaries.

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.

With regard to potential non-radiological impacts, the proposed action does not involve any historical sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternative 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 MP1.

Agencies and Persons Contacted

In accordance with its stated policy, on September 25, 2000, the staff consulted with the State of Connecticut official, Mr. Michael Firsick of the Connecticut Department of Environmental Protection, 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 Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated June 6, 2000, which may be examined, and/or copied for a fee, at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records are accessible electronically from the ADAMS Public Library component on the NRC Web site, http://www.nrc.gov/NRC/ADAMS/index.html (the Electronic Reading Room).

Dated at Rockville, Maryland, this 31st day of October 2000.

For the Nuclear Regulatory Commission.

John B. Hickman,

Project Manager, Decommissioning Section, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–28775 Filed 11–8–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–321 and 50–366]

Southern Nuclear Operating Company, Inc. Edwin I. Hatch Nuclear Plant, Units 1 and 2; Notice of Availability of the Draft Supplement 4 to the Generic Environmental Impact Statement and Public Meeting for the License Renewal of Edwin I. Hatch Nuclear Plant, Units 1 and 2

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has published a draft plant-specific supplement to NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants [GEIS],'' regarding the renewal of operating licenses DPR–57 and NPF–5 for Edwin I. Hatch Nuclear Plant (HNP), Units 1 and 2, for an additional 20 years. HNP is located in Appling County, Georgia. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

The draft supplement to the GEIS is available electronically through the NRC's Public Electronic Reading Room (PERR) found on the Internet at the following web address: http://www.nrc.gov/NRC/ADAMS/index.html. From this site, the public can gain access to the NRC's Agencywide Document Access and Management Systems (ADAMS), which provides text and image files of NRC's public documents. The draft report can also be examined, or copied for a fee, at the NRC's Public Document Room found at One White Flint North, 11555 Rockville Pike (first floor), Rockville, MD. In addition, the Appling County Library, located at 242 East Parker Street, Baxley, Georgia, has agreed to make the draft supplement to the GEIS available for public inspection.

Any interested party may submit comments on the draft supplement to the GEIS for consideration by the NRC staff. To be certain of consideration, comments on the draft supplement to the GEIS and the proposed action must be received by January 24, 2001. Comments received after the due date will be considered if it is practical to do so, but the NRC staff is able to assure consideration only for comments received on or before this date. Written comments on the draft supplement to the GEIS should be sent to:

David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Mailstop T 6 D 59, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001.

Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Comments may be submitted electronically to the NRC to the e-mail address hatcheis@nrc.gov. All comments received by the NRC, including those made by Federal, State, and local agencies; Indian tribes; or other interested persons, will be accessible electronically through NRC's PERR link listed above, and can be examined, or copied for a fee, at the NRC's Public Document Room in Rockville, Maryland.

The NRC staff will hold public meetings to present an overview of the draft plant-specific supplement to the GEIS and to accept public comments on the document. The public meetings will be held at the Southeastern Technical Institute, Vidalia, Georgia, on December 12, 2000. There will be two sessions to accommodate interested parties. The first session will commence at 1:30 p.m. and will continue until 4:30 p.m. The second session will commence at 7:00 p.m. and will continue until 10:00 p.m. Both meetings will be transcribed and will include (1) a presentation of the contents of the draft plant-specific supplement to the GEIS, and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft report. Persons may pre-register to attend or present oral comments at the meeting by contacting Mr. Andrew Kugler by telephone at 1–800–368–5642, extension 2828, or by Internet to the NRC at hatcheis@nrc.gov no later than December 7, 2000. Members of the public may also register to provide oral comments within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Mr. Kugler's attention no later than December 7, 2000, to provide the NRC staff adequate notice to determine whether the request can be accommodated.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Kugler, Generic Issues, Environmental, Financial, and Rulemaking Branch, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Mr. Kugler may be contacted at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 31st day of October, 2000.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 00–28774 Filed 11–8–00; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection: Comment Request for Review of an Expiring Information Collection: Procedures for Submitting Compensation and Leave Claims

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of an expiring information collection. Procedures for Submitting Compensation and Leave Claims is used to collect information from current and former Federal employees who are submitting a claim for compensation and/or leave. OPM needs this information in order to adjudicate the claim.

Approximately 100 claims are submitted annually. It takes approximately 60 minutes to compile the information needed to submit a claim. The annual estimated burden is 100 hours.

Comments are particularly invited on:

- Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;
- Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and
- Ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to *mbtoomey@opm.gov.*

DATES: Comments on this proposal should be received on or before January 8, 2001.

ADDRESSES: Send or deliver comments to—Melissa A. Drummond, Program Manager, Office of Merit Systems Oversight, Office of Merit Systems

Oversight and Effectiveness, U.S. Office of Personnel Management, 1900 E Street, NW, Room 7671, Washington, DC 20415.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–28790 Filed 11–8–00; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of an Information Collection: Forms RI 38–117, 38–118, and RI 37–22

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of an information collection. RI 38–117, Rollover Election, is used to collect information from each payee affected by a change in the tax code (Pub. L. 102–318) so that OPM can make payment in accordance with the wishes of the payee. RI 38–118, Rollover Information, explains the election. RI 37–22, Special Tax Notice Regarding Rollovers, provides more detailed information.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of OPM, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 6,000 RI 38–118 forms will be completed annually. We estimate it takes approximately 30 minutes to complete the form. The annual burden is 3,000 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–2150, or E-mail to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before January 8, 2001.

ADDRESSES: Send or deliver comments to—Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349A, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Donna G. Lease, Team Leader, Forms Analysis and Design, Budget and Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–28792 Filed 11–8–00; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection: Federal Employees Health Benefits (FEHB) Open Season Express Interactive Voice Response (IVR) System

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a revised information collection. The FEHB Open Season Express IVR System and the open season web site, Open Season Online, is used by retirees and survivors; it collects information for changing FEHB enrollments, collecting dependent and other insurance information for self and family enrollments, requesting plan brochures, requesting a change of address, requesting cancellation or suspension of FEHB benefits, asking to make payment to the Office of Personnel Management when the FEHB payment is greater than the monthly annuity amount, or requesting a copy of the FEHB Customer Satisfaction Survey results.

We estimate we will receive 112,000 responses per year to the IVR system and the on-line web site. Each response takes approximately 10 minutes to complete. The annual burden is 18,666 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–2150, or email to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before December 11, 2000.

ADDRESSES: Send or deliver comments to—

James K. Freiert, Chief, Retirement Services Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 1312, Washington, DC 20415.

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Donna G. Lease, Team Leader, Forms Analysis and Design, Budget and Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–28791 Filed 11–8–00; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IA–1905/803–150]

ML Oklahoma Venture Partners, Limited Partnership, et al.; Notice of Application

November 3, 2000.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Advisers Act of 1940 (''Advisers Act'').

APPLICANTS: ML Oklahoma Venture Partners, Limited Partnership (''ML Oklahoma'' or ''Partnership'') and MLOK Co., Limited Partnership (''Managing General Partner'').

RELEVANT ADVISERS ACT SECTIONS: Exemption requested under section 206A of the Advisers Act from section 205(a)(1) of the Advisers Act.

SUMMARY OF APPLICATION: Applicants request an order permitting the Partnership to make in-kind distributions of its portfolio securities and, in connection with these distributions, deem gains or losses on the distributed securities to be realized, for purposes of the Managing General Partner's performance compensation, upon distribution to ML Oklahoma's limited partners.

FILING DATES: The application was filed on May 11, 2000 and amended on October 27, 2000.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with copies of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 28, 2000, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. ML Oklahoma Venture Partners, Limited Partnership and MLOK Co., Limited Partnership, Two World Financial Center, 23rd Floor, New York, NY 10281–6123.

FOR FURTHER INFORMATION CONTACT: Karen Goldstein, Senior Counsel, or Jennifer Sawin, Assistant Director, at (202) 942–0716 (Division of Investment Management, Office of Investment Adviser Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. ML Oklahoma is a limited partnership organized under the laws of Delaware and is a business development company as defined in section 202(a)(22) of the Advisers Act (''BDC''). ML Oklahoma's investment objective is to seek long-term capital appreciation by making venture capital investments in new and developing companies, primarily Oklahoma companies, which the Partnership's management believes offer significant long-term growth opportunities.

2. ML Oklahoma's registration statement under the Securities Act of 1933 on Form N–2 became effective on December 1, 1988. ML Oklahoma closed its public offering on August 14, 1989, at which time it sold 10,248 units of limited partnership interest (''Units'') for total proceeds of $10.2 million. The Partnership is scheduled to terminate on December 31, 2000.

3. ML Oklahoma has five general partners, consisting of four individuals (''Individual General Partners'') and the Managing General Partner. The Individual General Partners include three ML Oklahoma independent General Partners (defined in the application as individuals who are not ''interested persons'' of ML Oklahoma within the meaning of section 2(a)(19) of the Investment Company Act of 1940) and one general partner that is an affiliated person of the Managing General Partner. The Managing General Partner is a limited partnership controlled by its general partner, Merrill Lynch Venture Capital Inc. (''Management Company''). The Management Company performs, or arranges for the performance of, management and administrative services necessary for the operation of ML Oklahoma. The Management Company is an indirect subsidiary of Merrill Lynch & Co., Inc.

4. The Managing General Partner is the managing general partner of ML Oklahoma and is solely responsible for ML Oklahoma's venture capital investments. The Managing General Partner and the Management Company are each registered with the Commission under the Advisers Act.

5. Allocation of profits and losses of ML Oklahoma to its Partners are made in accordance with the terms of the Amended and Restated Agreement of Limited Partnership of the Partnership (''Partnership Agreement''). The Partnership Agreement generally provides that each year, with respect to venture capital investments, if the sum of all profits allocated to the Limited Partners equals the sum of all losses allocated the Limited Partners, and the Limited Partners have been allocated a ''priority return,'' [1] the Managing General Partner is allocated 30% of profits. When the Managing General Partner has been allocated 20% of all profits, it is then (and thereafter) allocated 20% of profits (''Managing General Partner's Allocation''). The Partnership Agreement provides that ML Oklahoma's investment income and net realized capital gains or losses, in excess of the Managing General Partner's Allocation, shall be allocated among all the Partners (including the Managing General Partner) in proportion to their capital contributions. The Partnership Agreement also provides that all other profits and losses, including interest or other income on funds not invested in venture capital investments, will be allocated among all the Partners (including the Managing General Partner) in proportion to their capital contributions.

6. The Partnership Agreement provides that the Individual General Partners may make in-kind distributions of any or all of ML Oklahoma's portfolio securities ''in such amounts and at such times as they may determine.'' The Partnership Agreement provides that, for the purpose of allocating profits and losses, unrealized gains or losses attributable to any securities distributed in-kind to Partners will be deemed realized upon distribution. Any in-kind distribution made by the Partnership will be valued based on its market price on the national securities exchange or the NASDAQ National Market System (''NASDAQ NMS'') at the close of trading on the date the securities are first distributed by the Partnership. Prior to making any in-kind distribution, at least a majority of the Independent General Partners will have approved the proposed in-kind distribution as being in the best interests of the Limited Partners. The Limited Partners will be notified prior to any in-kind distribution made by the Partnership.

7. Although the Partnership Agreement expressly contemplates in-kind distributions both during the life of ML Oklahoma and upon its termination, and permits the Managing General Partner to receive compensation based upon gains attributable to securities distributed in kind, ML Oklahoma has made no such distributions. In a prior application filed by the Managing General Partner, the Management Company and ML Oklahoma for certain exemptions under the Investment Company Act of 1940, those applicants undertook that ML Oklahoma would not make in-kind distributions until it obtained a no-action letter from the Commission staff confirming that unrealized gains or losses attributable to in-kind distributions are properly deemed realized upon such distribution, or obtained an exemption pursuant to section 206A of the Advisers Act permitting ML Oklahoma to deem such gains or losses to be realized upon in-kind distributions of securities. [2]

Applicant's Legal Analysis

1. Section 205(a)(1) of the Advisers Act prohibits any investment adviser register under the Advisers Act from entering into a contract which provides

[1] Under the Partnership Agreement, the ''Priority Return'' is an amount equal to a cumulative, non-compounded return of 10% per annum on the average daily amount of the gross capital contributions invested in liquidated investments from the date of the last closing of the sale of Units through the date each venture capital investment is liquidated. The Priority Return is calculated on a cumulative basis over the life of the Partnership through the relevant year.

[2] *See* ML Oklahoma Venture Partners, L.P., *et al.,* Investment Company Act Release Nos. 16613 (Oct. 26, 1988) [53 FR 44272 (Nov. 2, 1988)] (Notice of Application) and 16652 (Nov. 23, 1988), 42 SEC Docket 463 (Order).

for compensation based upon ''a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client,'' commonly referred to as a ''performance fee.''

2. Section 205(b)(3) provides, in pertinent part, that the performance fee proscriptions of section 205(a)(1) are not applicable to advisory contracts between an investment adviser and a BDC if, among other things, ''the compensation provided for in such contract does not exceed 20 per centum of the realized capital gains upon the funds of [the BDC] over a specified period or as of definite dates, computed net of all realized capital losses and unrealized capital depreciation.'' Thus, Applicants assert, section 205(b)(3) recognizes the appropriateness of a performance fee as compensation for investment advisers to BDCs in light of the special nature of BDCs.

3. Section 205(b)(3) permits a performance fee with respect to realized gains only and does not contemplate the procedures set forth in the Partnership Agreement whereby unrealized gains or losses are ''deemed'' realized under certain conditions for purposes of the compensation formula.

4. Section 206A of the Advisers Act authorizes the Commission, by order upon application, to exempt any person or transaction from any provision of the Advisers Act ''if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the Advisers Act].''

5. Applicants request exemptive relief from section 205(a)(1) to permit the Partnership to make in-kind distributions of shares of common stock that ML Oklahoma holds in one of its two remaining investments. Upon distribution, the Partnership would deem realized any unrealized gains or losses on the securities being distributed. Applicants submit that the performance fee received by the Managing General Partner from the in-kind distribution may be prohibited under section 205(a)(1) of the Advisers Act and it is not included within the exemption from that prohibition provided in section 205(b)(3).

6. Applicants state that the exemption sought is consistent with the standards set out in Advisers Act section 206A. Congress has found it appropriate to permit a performance fee in the case of an investment adviser to a BDC. Applicants argue that to the extent section 205(b)(3) requires a performance fee to be based on realized capital gains, their proposal is consistent with the statutory purpose. Once the in-kind distribution is made, the Managing General Partner will no longer have any control over the investment in the subject securities; investors in ML Oklahoma will have the exclusive ability to liquidate such investments. Furthermore, Applicants state that, under the terms of their proposal, the proper valuation of the securities upon which the performance fee is based would be easily determinable. Applicants request exemptive relief only with respect to in-kind distributions of securities that Applicants represent are traded on the NASDAQ NMS and for which market quotations are readily available.[3] Thus, applicants assert, the issues that would be raised if ML Oklahoma paid a performance fee based on the valuation of securities of private companies are not present.

7. Applicants submit that it is in the best interests of the Partners, particularly the Limited Partners, and in the public interest for ML Oklahoma to have the authority to make in-kind distributions of the subject portfolio securities. First, Applicants represent that the distributed securities will be freely transferable, and the Partners will be able to determine whether to hold or sell them. Applicants assert that as a venture capital fund, ML Oklahoma has no experience or expertise with respect to publicly traded securities, and therefore the Partners do not lose the benefits of expert, professional management by receiving in-kind distributions. Second, Applicants assert that the distributions of portfolio securities will not constitute a taxable event with respect to the Partnership or the Partners, so that Partners will, in determining whether to hold or sell the securities, control the timing of realization of capital gains. Third, to the extent that ML Oklahoma holds a significant percentage of the subject company's shares, Applicants expect that the market could more easily absorb sales by those Partners desiring to sell over a more extended time period than if ML Oklahoma sold its position directly over a shorter period of time. Finally, Applicants assert that in-kind distributions on termination are an efficient way of winding up the Partnership's affairs and avoiding premature dispositions of portfolio investments.

[3] In the Application, Applicants state that the relief they request extends to in-kind distributions of securities only if, at the time of the distribution, the securities continue to be traded on a national securities exchange or the NASDAQ NMS.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–28793 Filed 11–8–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24725; File No. 812–12136]

Principal Life Insurance Company, et al., Notice of Application

November 2, 2000.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (the ''1940 Act'') granting exemptions from the provisions of Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder to permit the recapture of credits applied to purchase payments made under certain variable annuity contracts.

Summary of Application: Applicants Principal Life Insurance Company (''Principal Life''), Principal Life Insurance Company Separate Account B (the ''Account''), and Princor Financial Services Corporation (''Princor'') seek an order to permit, under specified circumstances, the recovery of certain credits previously applied to purchase payments made under: (i) Certain deferred variable annuity contracts that Principal Life issues through the Account (the contracts, including certain data pages and endorsements, are collectively referred to herein as the ''Contracts''), and (ii) contracts that Principal Life may issue in the future through the Account, any of its other separate accounts, or any separate accounts that it may establish in the future(''Future Accounts'') which contracts are substantially similar in all material respects to the Contracts (''Future Contracts''). Applicants also request that the order extend to any other National Association of Securities Dealers, Inc. (''NASD'') member broker-dealer controlling, controlled by, or under common control with Principal Life, whether existing or created in the future, that serves as a distributor or principal underwriter of the Contracts or any Future Contracts offered through the Account or any Future Accounts (collectively ''Affiliated Broker-Dealers'').

Applicants: Principal Life, the Account, Princor, and any of Principal Life's Future Accounts established to

support Future Contracts issued by Principal Life (collectively, ''Applicants'').

Filing Date: The Application was filed on June 22, 2000 and amended on October 30, 2000.

Hearing or Notification of Hearing: An order granting the Application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 on November 27, 2000 and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW, Washington, DC 20549. Applicants, c/o J. Sumner Jones, Jones & Blouch, L.L.P., 1025 Thomas Jefferson Street, NW., Washington, DC 20007–0805.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Marquigny, Senior Counsel, or Keith Carpenter, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the Application; the complete Application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Principal Life is a stock life insurance company organized under the laws of Iowa in 1879 as Bankers Life Association. It changed its name to Bankers Life Company in 1911, to Principal Mutual Life Insurance Company in 1986, and then to Principal Life Insurance Company in 1998. The name change to Principal Life Insurance Company was made in connection with the reorganization into a mutual holding company structure in 1998. Principal Life's principal business is offering life insurance and annuity contracts in 50 states and the District of Columbia. Principal Mutual Holding company is the holding company of Principal Life, its affiliates and subsidiaries, collectively known as Principal Financial Group.

2. The Account was established in 1970 by Principal Life as a separate account under Iowa law and is registered with the Commission as a unit investment trust under the Act. The Account funds the benefits available under the Contracts and other variable annuity contracts issued by Principal Life. The offering of the Contracts by Principal Life is registered under the Securities Act of 1933. That portion of the assets of the Account that is equal to the reserves and other contract liabilities with respect to the Account is not chargeable with liabilities arising out of any other business of Principal Life. Any income, gains or losses, realized or unrealized, from assets allocated to the Account are, in accordance with the various contracts, credited to or charged against the Account without regard to other income, gains or losses of Principal Life.

3. Princor is an Iowa corporation controlled by Principal Financial Services, Inc. and is the principal underwriter of the Contracts. Princor is registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the NASD. Sales of the Contracts are made by registered representatives of broker-dealers authorized by Princor to sell the Contracts. Such registered representatives are also licensed insurance agents or brokers of Principal Life.

4. The Contracts are flexible purchase payment individual deferred combination fixed and variable annuity contracts. The Contracts may be issued under a qualified contract or as a non-qualified contract.

5. The minimum initial purchase payment for a Contract is $2,500 for non-qualified retirement programs and $1,000 for a qualified Contract. The minimum subsequent purchase payment is $100. Principal Life may limit total Contract purchase payments to $2,000,000.

6. At the time of issuance, a Contract owner may elect to purchase the Purchase Payment Credit Rider. If the Rider is elected, Principal Life will add a 5% payment enhancement or credit to the owner's Contract (the ''Credit'') upon receipt of a purchase payment from the Contract owner during the first contract year. After the first contract year, additional purchase payments will not receive a Credit. Principal Life will fund Credits from its general account assets and will allocate Credits among investment options (excluding certain fixed benefit options used for dollar cost averaging (the DCA Plus accounts)) in the same proportion as the applicable purchase payment.

7. Principal Life will recover any Credit applied if the Contract owner returns the Contract for a refund during the 10-day ''free look'' period. The free look period is the 10-day period (or a longer period in states where required) during which a Contract owner may return a Contract after it has been delivered. Upon such return, the Contract owner generally will receive a full refund of the Contract value, less any Credit, and no withdrawal charge will apply to the refund. The Contract owner will retain any earnings attributable to the Credit allocated to his or her account value or, if there has been a decline in the value of accumulation units for an investment to which a Credit has been allocated, will bear the loss from such decline. The refund amount may thus be more or less than the Contract owner's purchase payment. Where applicable state law requires that the full amount of the purchase payment be refunded, the Contract owner will receive that amount, and Principal Life will retain any earnings, or bear any loss, attributable to the Credit as well as to the purchase payment. The recovery of Credits from the sub-accounts will be effected by canceling accumulation units equal in value to the full amounts to be recovered, the number of such units to be calculated at the accumulation unit value next determined. Amounts recovered will be withdrawn from each investment option in the same proportion that the value of the investment account of each investment option bears to the Contract value.

8. Contract owners may allocate their purchase payments among a fixed account, two different DCA Plus fixed options (which will not be available to Contract owners who elect the Purchase Payment (Credit Rider), and a number of sub-accounts of the Account. Each sub-account invests in shares of a corresponding portfolio of certain underlying investment companies (''Underlying Funds''). Principal Life may, subject to compliance with applicable law, add other sub-accounts, eliminate or combine existing sub-accounts or transfer assets in one sub-account to another sub-account established by Principal Life or an affiliated company.

9. The Contracts provide for the following charges: (i) A withdrawal or contingent deferred sales charge (''CDSC'') as a percentage of amounts withdrawn attributable to purchase payments that have been in the Contract less than seven complete years, with the applicable percentage charge declining from a maximum of 6% in years zero, one and two to 0.0% in year seven and thereafter; (ii) an annual contract fee

that is the lesser of $30 or 2% of the accumulated value (which may be waived under certain circumstances); (iii) a daily mortality and expense risks charge in an amount equal on an annual basis to 1.25% of the value of each variable investment account, deducted from each sub-account; and (iv) any applicable state or local premium taxes up to 3.5%, depending on the Contract owner's state of residence or the state in which the Contract was sold. In addition, the Underlying Funds also impose a management and administrative fee which varies depending upon which Funds are selected.

10. If the Purchase Payment Credit Rider is elected, the Contracts will provide for the following charges: (i) A withdrawal or contingent deferred sales charge (''CDSC'') as a percentage of amounts withdrawn attributable to purchase payments that have been in the Contract less than nine complete years, with the applicable percentage charge declining from a maximum of 8% in years zero, one, two and three to 0.0% in year nine and thereafter; (ii) an annual contract fee that is the lesser of $30 or 2% of the accumulated value (which may be waived under certain circumstances); (iii) a daily mortality and expense risks charge in an amount equal on an annual basis to 1.25% of the value of each variable investment account, deducted from each sub-account; (vi) a Purchase Payment Credit Rider charge payable for the first 8 contract years, in an amount equal on an annual basis to .60% of the value of each variable investment account, deducted from each sub-account; and (v) any applicable state or local premium taxes up to 3.5%, depending on the Contract owner's state of residence or the state in which the Contract was sold. In addition, the Underlying Funds also impose a management and administrative fee which varies depending upon which Funds are selected.

11. Because of the higher charges applicable to a Contract with the Purchase Payment Credit Rider, the prospectus description of the Rider will include a statement to the effect that expenses of a Contract with the Rider may be higher than expenses of a Contract without the Rider and the amount of the Credits may be more than offset by the fees and charges associated with the Credits. The prospectus will also state that there may be circumstances in which a Contract owner may be worse off for having the Rider because of the higher charges.

Applicants' Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request that the Commission, pursuant to Section 6(c) of the Act, grant the exemptions requested below with respect to the Contracts, and any Future Contracts funded by the Account or Future Accounts, that are issued by Principal Life and underwritten or distributed by Princor or Affiliated Broker-Dealers. Applicants undertake that Future Contracts will be substantially similar in all material respects to the Contracts. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants seek exemption pursuant to Section 6(c) from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to the extend deemed necessary to permit Principal Life to recover any Credit previously applied to purchase payments under certain Contracts or Future Contracts if a Contract owner returns the Contracts or Future Contracts for a refund during the free look period.

3. Applicants represent that it is not administratively feasible to track asset-based charges against Credits in the Account after the Credits have been applied. Accordingly, the asset-based charges applicable to the Account will be assessed against the entire amounts held in the Account, including Credits, during the free look period. As a result, during such period, the aggregate asset-based charges assessed against a Contract owner's annuity account value will be higher than they would have been if the owner's annuity account value did not include any Credits.

4. Subsection (i) of Section 27 of the Act provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for such a separate account or sponsoring insurance company to sell a contract funded by the registered separate account unless such contract is a redeemable security. Section 2(a)(32) defines a ''redeemable security'' as any security, other than short-term paper, under the terms of which the holder, upon representation to the issuer, is entitled to receive approximately his or her proportionate share of the issuer's current net asserts, or the cash equivalent thereof.

5. Applicants submit that the recovery of Credits in the circumstances set forth in the Application does not deprive a Contract owner of his or her proportionate share of the issuer's current net assets. A Contract owner's interest in the Credit allocated to his or her annuity account value is not vested until the applicable free look period has expired without return of the Contract. Until the right to recovery has expired and any Credit has vested, Principal Life retains the right and interest therein. Thus, when Principal Life recovers any Credit, it is merely retrieving its own assets. The Contract owner is not deprived of a proportionate share of the Account's assets because the Contract owner's interest in such Credit has not vested. Moreover, Principal Life does not recover any earnings attributable to Credits allocated to a Contract owner's account value prior to exercise of the free look return.

6. Applicants further submit that permitting a Contract owner to retain a Credit upon the exercise of the free look return provisions would be unfair and would deny Principal Life a reasonable measure of protection against anti-selection. The anti-selection risk here is that, rather than spreading purchase payments over a number of years, a Contract owner might seek to manipulate Contracts provisions in a manner that leaves Principal Life little time to recover the cost of the Credits. For example, permitting a Contract owner to retain a Credit upon the exercise of the free look return would encourage the purchase of Contracts for a quick profit upon return rather than with the intention of making a long-term investment. As stated above, the amounts recovered will equal the Credits provided by Principal Life from general account assets, and any gains attributable to such Credits will remain a part of the Contract owner's Contract value. For the foregoing reasons, Applicants submit that the provisions for recovery of Credits under the Contracts do not violate Section 2(a)(32) and 27(i)(2)(A) of the Act.

7. Applicants believe, moreover, that the exemptive relief requested is consistent with and serves the stated

purpose of the National Securities Markets Improvement Act of 1996 (''NSMIA'') in amending the Act to ''provide more effective and less burdensome regulation.'' Sections 26(e) and 27(i) were added to the Act to implement the purposes of NSMIA and Congressional intent. The application of Credits to purchase payments under the Contracts should not raise any questions as to Principal Life's compliance with the provisions of Section 27(i). However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from Sections 2(a)(32) and 27(i)(2)(A), to the extent deemed necessary, to permit the recovery of Credits under the circumstances described in the Application with respect to Contracts and Future Contracts, without the loss of relief from Section 27 provided by Section 27(i).

8. Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company to accomplish the same purposes as contemplated by Section 22(a). Rule 22c–1 thereunder prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Principal Life's recovery of Credits as described in the Application might arguably be viewed as involving the redemption of redeemable securities for a price other than one based on the current net asset value of the Account.

9. Applicants believe that the recovery of the Credits does not violate Section 22c–1 and Rule 22c–1. Such recovery does not involve either of the harms that Rule 22c–1 was intended to eliminate or reduce, namely: (i) The dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or repurchase at a price above it, and (ii) other unfair results, including speculative trading practices. These harms resulted from the practice of basing the price of a mutual fund share on the net asset value per share determined as of the close of the market on the previous day. Such backward pricing allowed investors to take advantage of increases or decreases in net asset value that were not yet reflected in the price, thereby diluting the value of outstanding fund shares.

10. Applicants submit that the recovery of Credits as described in the Application does not pose such a threat of dilution. In effecting recoveries, Principal Life will redeem interests in a Contract owner's Contract at a price determined on the basis of the current net asset value of the sub-account(s) to which the owner's Contract value is allocated. The amounts recovered will equal the Credits that Principal Life has paid out of general account assets. Except where state law requires that the full amount of the purchase payment be refunded, the Contract owners will be entitled to retain any investment gains attributable to the Credits, and the amounts of such gains will be determined on the basis of the current net asset values of the applicable sub-accounts. Under these circumstances, in Applicants' view, the recovery of the Credits does not involve dilution. Applicants further submit that the second harm that Rule 22c–1 was designed to address, namely speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recovery of Credits.

11. Applicants contend that, because neither of the harms that Rule 22c–1 was meant to address are found in the recovery of Credits, Rule 22c–1 and Section 22(c) should not be construed as applicable thereto. However, to avoid any uncertainty in this regard, Applicants request an exemption from the provisions of Section 22(c) and Rule 22c–1 to the extent deemed necessary to permit them to recover Credits under the Contracts and Future Contracts as described in the Application.

12. Applicants submit that their request for an order that applies to Future Accounts and Future Contracts that are substantially similar in all material respects to the Contracts and underwritten or distributed by Princor or Affiliated Broker-Dealers is appropriate in the public interest. Such an order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Investors will not receive any benefit or additional protection if Applicants are required repeatedly to seek exemptive relief presenting no issue under the Act that has not already been addressed in the Application. Having Applicants file additional applications would impair Applicants' ability to effectively take advantage of business opportunities as they arise. Applicants undertake that Future Contracts funded by the Account or by Future Accounts which seek to rely on the order issued pursuant to this Application will be substantially similar in all material respects to the Contracts.

Conclusion

Section 6(c) of the Act, in pertinent part, provides that the Commission, by order upon application, may conditionally or unconditionally exempt any persons, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act, or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants submit that, for the reasons stated in the Application, their exemptive requests meet the standards set out in Section 6(c) and that an order should, therefore, be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–28750 Filed 11–8–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24727; 812–12244]

Firstar Funds, Inc., et al.; Notice of Application

November 3, 2000.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 17(a) of the Act.

Summary of the Application: Applicants request an order to permit certain series of Firstar Funds, Inc. (''Firstar'') to acquire all of the assets and liabilities of all of the series of Firstar Stellar Funds (''Stellar''), Mercantile Mutual Funds, Inc. (''Mercantile''), and Firstar Select Funds (''Select'') (the ''Reorganizations''). Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

Applicants: Firstar, Stellar, Mercantile, Select, Firstar Investment Research & Management Company, LLC (''FIRMCO''), and Firstar Bank, N.A. (''Firstar Bank'').

Filing Dates: The application was filed on September 13, 2000. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 24, 2000, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: Firstar, Stellar, and Mercantile, 615 East Michigan Street, Milwaukee, WI 53201–3011; Select, 431 North Pennsylvania Street, Indianapolis, IN 46204; FIRMCO, Firstar Center, 777 East Wisconsin Avenue, Suite 800, Milwaukee, WI 53202; and Firstar Bank, 425 Walnut Street, Cincinnati, OH 45202.

FOR FURTHER INFORMATION CONTACT: Susan K. Pascocello, Senior Counsel, at (202) 942–0674, or Michael W. Mundt, Branch Chief, at (202) 942–0578 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Stellar, a Massachusetts business, Select, an Ohio business trust, and Mercantile, a Maryland corporation, are registered under the Act as open-end management investment companies and are comprised of 12, 1 and 19 series respectively (the ''Acquired Funds''). Firstar, a Wisconsin corporation, is registered under the Act as an open-end management investment company. Firstar is comprised of 36 series, 27 of which will participate in the Reorganizations. Sixteen of the participating series are currently operating (the ''Existing Acquiring Funds'') and eleven are newly organized shell series (the ''Shell Acquiring Funds,'' and together with the Existing Acquiring Funds, the ''Acquiring Funds''). [1] The Acquiring Funds and the Acquired Funds are collectively referred to as the ''Funds.''

2. FIRMCO is registered under the Investment Advisers Act of 1940 (''Advisers Act'') and is the investment adviser for Stellar, Mercantile and the Existing Acquiring Funds, and will serve as the investment adviser to the Shell Acquiring Funds. Firstar Bank, N.A. (''Firstar Bank'') serves as investment adviser to Select's series, the Select REIT-Plus Fund (the ''Select Fund''), and is exempt from registration under the Advisers Act. FIRMCO and Firstar Bank are subsidiaries of Firstar Corporation.

3. FIRMCO, Firstar Bank and certain of their affiliated companies that are under common control with Firstar Corporation (the ''Firstar Group''), hold of record in their name, and in the names of their nominees, more than 5% (and with respect to certain Funds more than 25%) of the outstanding voting securities of certain of the Funds.[2] All of these securities are held for the benefit of others in a trust, agency, custodial, or other fiduciary or representative capacity, except that certain of the companies of the Firstar Group may, at times, own economic interests in certain money market Funds for their own account. Some of these securities are held for the benefit of employee benefit plans for employees of Firstar Corporation and its affiliates.

4. On June 6, 7, 13, 16, July 11, 13, 20, and August 15, 2000, the boards of directors or trustees of Firstar, Stellar, Select and Mercantile (together, the ''Boards''), including the directors or trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Directors''), unanimously approved Plans of Reorganization (each a ''Plan'' and collectively, the ''Plans'') between Firstar and Stellar, Select and Mercantile. Pursuant to the Plans, each Acquiring Fund will acquire all of the assets and liabilities of the corresponding Acquired Fund in exchange for shares of the Acquiring Fund.[3]

5. The various Funds have multiple classes of shares. The number of Acquiring Fund shares to be issued to shareholders of the Acquired Fund will be determined by dividing the aggregate net assets of each Acquired Fund class by the net asset value per share of the corresponding Acquiring Fund class, each computed as of the close of business immediately prior to the effective time of the Reorganization (''Effective Time''). Applicants state that the matching of classes was done in a way that provides the closest alignment between distribution channels and/or servicing and distribution-related expenses of each Acquired Fund and Acquiring Fund share class. In addition, Applicants represent that the rights and obligations of each class of shares of the Acquired Funds are substantially

[1] A registration statement for the Shell Acquiring Funds was filed with the Commission on September 20, 2000, and it is anticipated that it will be declared effective on November 17, 2000.

[2] The Firstar Group does not hold more than 5% of the outstanding voting securities of the Mercantile Conning Money Market Portfolio and the Firstar Conning Money Market Fund. Applicants will rely on Rule 17a-8 under the Act and not the requested order for the merger of these Funds.

[3] The Acquired Funds and their corresponding Acquiring Funds are: (1) Stellar Treasury Fund, Mercantile Treasury Money Market Portfolio and Firstar U.S. Treasury Money Market Fund; (2) Stellar Tax-Free Money Market Fund, Mercantile Tax-Exempt Money Market Portfolio and Firstar Tax-Exempt Money Market Fund; (3) Mercantile Bond Index Portfolio, Mercantile Government & Corporate Bond Portfolio and Firstar Aggregate Bond Fund; (4) Stellar U.S. Government Income Fund, Mercantile U.S. Government Securities Portfolio and Firstar U.S. Government Securities Fund; (5) Stellar Insured Tax-Free Bond Fund, Mercantile National Municipal Bond Portfolio and Firstar National Municipal Bond Fund; (6) Mercantile Money Market Portfolio and Firstar Money Market Fund; (7) Mercantile Intermediate Corporate Bond Portfolio and Firstar Intermediate Bond Market Fund; (8) Mercantile Short-Intermediate Municipal Portfolio and Firstar Tax-Exempt Intermediate Bond Fund; (9) Mercantile Balanced Portfolio and Firstar Balanced Growth Fund; (10) Mercantile Equity Index Portfolio and Firstar Equity Index Fund; (11) Mercantile Growth & Income Equity Portfolio and Firstar Growth & Income Fund; (12) Mercantile Growth Equity Portfolio and Firstar Growth Fund; (13) Mercantile Small Cap Equity Portfolio and Firstar Emerging Growth Fund; (14) Mercantile International Equity Portfolio and Firstar Core International Equity Fund; (15) Stellar Fund and Firstar Balanced Income Fund; (16) Stellar Capital Appreciation Fund and Firstar MidCap Index Fund; (17) Mercantile Conning Money Market Portfolio and Firstar Conning Money Market Fund; (18) Mercantile Missouri Tax-Exempt Bond Portfolio and Firstar Missouri Tax-Exempt Bond Fund; (19) Mercantile Equity Income Portfolio and Firstar Equity Income Fund (shell); (20) Mercantile Small Cap Equity Index Portfolio and Firstar Small Cap Index Fund (shell); (21) Stellar Ohio Tax-Free Money Market Fund and Firstar Ohio Tax-Exempt Money Market Fund (shell); (22) Stellar Strategic Income Fund and Firstar Strategic Income Fund (shell); (23) Stellar Growth Equity Fund and Firstar Large Cap Growth Fund (shell); (24) Stellar Relative Value Fund and Firstar Relative Value Fund (shell); (25) Stellar Science & Technology Fund and Firstar Science & Technology Fund (shell); (26) Stellar International Equity Fund and Firstar Global Equity Fund (shell); and (27) Select Fund and Firstar REIT Fund (shell).

similar to those of the corresponding class of shares of the Acquiring Funds into which they will be reorganized.[4] For purposes of calculating the deferred sales charges of shares of Acquiring Fund classes that charge a contingent deferred sales load, shareholders of the Acquired Funds will be deemed to have held the shares of the corresponding Acquiring Fund since the date the shareholders initially purchased the shares of the Acquired Fund.

6. Applicants state that the investment objectives, policies, and restrictions of each Acquiring Fund are substantially similar to those of its corresponding Acquired Fund. No sales charge will be imposed in connection with the Reorganizations. The Plans provide that Acquiring Fund shares will be distributed pro rata to the shareholders of record in the applicable Acquired Fund class, determined as of the close of business immediately prior to the Effective Time, in complete liquidation of each Acquired Fund. Applicants anticipate that the Reorganizations will be completed on or about November 27, 2000.

7. The Boards, including the Independent Directors, unanimously found that participation in the Reorganizations is in the best interest of each Fund and its shareholders and that the interests of existing shareholders of the Funds will not be diluted as a result of the Reorganizations. In approving the Reorganizations, the Boards considered, among other things, (a) the potential effect of the Reorganizations; (b) the expense ratios of the Acquiring Funds and the Acquired Funds; (c) the compatibility of the investment objectives and investment strategies of the Acquiring Funds and the Acquired Funds; (d) the terms and conditions of the Plans; and (e) the tax-free nature of the Reorganizations. FIRMCO or one of its affiliates (not the Funds) will assume all expenses incurred by the Funds in connection with the Reorganizations.

8. The Plans may be terminated by mutual written consent of the Acquiring Funds and Acquired Funds at any time prior to the Effective Time. In addition, either party may terminate the Plans in writing without liability to the terminating party if certain conditions are not satisfied prior to the Effective Time.

9. The registration statement on Form N–14 for Firstar (which contains a combined prospectus/proxy statement for each of Stellar and Mercantile) was filed with the Commission on September 7, 2000, and the registration statement was declared effective on October 7, 2000. The combined prospectus/proxy statements contained in the N–14 registration statement were mailed to shareholders of Stellar and Mercantile on October 23, 2000. The definitive proxy materials for Select were filed with the Commission on October 6, 2000, and were sent to the shareholders of Select on October 11, 2000. A special meeting of shareholders of Select to consider the Reorganizations is to be held on November 8, 2000, and special meetings of the shareholders of Stellar and Mercantile are to be held on November 24, 2000.

10. The consummation of the Reorganizations is subject to certain conditions, including: (a) A registration statement under the Securities Act of 1933 for the Acquiring Funds will have become effective; (b) the Acquired Fund shareholders will have approved the Plans; (c) applicants will have received exemptive relief from the Commission to permit the Reorganizations; (d) the Funds will have received an opinion of counsel concerning the tax-free nature of the Reorganizations; and (e) each Acquired Fund that is not reorganizing into a corresponding Shell Acquiring Fund will have declared a dividend to distribute substantially all of its investment company taxable income and net capital gain, if any, to its shareholders. Applicants agree not to make any material changes to the Plans that affect the application without prior Commission approval.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include (a) any person that directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors/trustees, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants state that the Firstar Group holds of record more than 5% (and in some cases more than 25%) of the outstanding voting securities of certain Funds. Because of this ownership, applicants state that these Funds may be deemed affiliated persons for reasons other than those set forth in rule 17a–8 and therefore unable to rely on the rule. Applicants request an order pursuant to section 17(b) of the Act exempting them from section 17(a) to the extent necessary to consummate the Reorganizations.

4. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants submit that the terms of the Reorganizations satisfy the standards set forth in section 17(b). Applicants note that the Boards, including all of the Independent Directors, found that participation in the Reorganizations is in the best interests of each Fund and its shareholders and that the interests of the existing shareholders of each Fund will not be diluted as result of the Reorganizations. Applicants also note that the Reorganizations will be based on the Funds' relative net asset value.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–28795 Filed 11–8–00; 8:45 am]

BILLING CODE 8010–01–M

[4] The two classes of Select Fund will be reorganized into one class of Firstar REIT Fund, which, unlike the classes of Select Fund, is not subject to a distribution or shareholder servicing plan.

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24728; File No. 812–12068]

National Life Insurance Company, et al.; Notice of Application

November 3, 2000.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of Application for an order under the Investment Company

Act of 1940 (the ''Act'') approving certain substitutions of securities and an order of exemption pursuant to Section 17(b) of the Act from Section 17(a) of the Act.

Summary of Application: Applicants seek an order approving the substitution of securities issued by certain management investment companies (each a ''Management Company'') and held by either the Annuity Account or the Life Account (each, an ''Account,'' together, the ''Accounts'') to support variable annuity contracts or variable life insurance contracts (collectively, the ''Contracts'') issued by NLIC. Applicants also seek an order of the Commission pursuant to Section 17(b) of the Act exempting them, Market Street Fund, Inc. (''MSF'') and sentinel Variable Products Trust (''SVPT''), and certain investment portfolios of each (each, a ''Portfolio'' or ''Fund,'' as appropriate), from Section 17(a) of the Act to the extent necessary to permit NLIC to carry out certain of the above-referenced substitutions of securities by redeeming shares issued by MSF in kind and using the proceeds to purchase shares issued by SVPT.

Applicants: National Life Insurance Company (''NLIC''), National Variable Annuity Account II (''Annuity Account''), and National Variable Life Insurance Account (''Life Account'').

Filing Date: The application was filed on April 20, 2000, and was amended and restated on November 3, 2000.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 24, 2000, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o D. Russell Morgan, Esq., National Life Insurance Company, National Life Drive, Montpelier, VT 05604.

FOR FURTHER INFORMATION CONTACT: Keith A. O'Connell, Senior Counsel, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. NLIC is a stock life insurance company, all of the outstanding stock of which is indirectly owned by National Life Holding Company, a mutual insurance holding company, established under Vermont law in 1999. NLIC is authorized to transact life insurance and annuity business in Vermont and in 50 other jurisdictions. As of December 31, 1999, NLIC had consolidated assets of approximately $10 billion. For purposes of the Act, NLIC is the depositor and sponsor of the Annuity Account and the Life Account as those terms have been interpreted by the Commission with respect to variable life insurance and variable annuity separate accounts. Each Account is a ''separate account'' as defined by Rule 0–1(e) under the 1940 Act, and is registered with the commission as an unit investment trust.

2. The Annuity Account is divided into twenty-seven subaccounts. Each subaccount invests exclusively in a Fund of one of eleven series-type Management Companies. The assets of the Annuity Account support variable annuity Contracts, and interests in the Account offered through each Contracts have been registered under the Securities Act of 1933 (the ''1933 Act'') on Form N–4.

3. The Life Account is divided into forty-eight subaccounts. Each subaccount invests exclusively in shares representing an interest in a separate corresponding Fund of one of eight series-type Management Companies. The assets of the Life Account support variable life insurance Contracts, and interests in this Account offered through such Contracts have been registered under the 1933 Act on Form S–6.

4. MSF is registered under the Act as an open-end diversified management investment company. MSF is a series investment company as defined by Rule 18f–2 under the Act and currently comprises twelve Portfolios. MSF issues a separate series of shares of stock in connection with each Portfolio and has registered these shares under the 1933 Act on Form N–1A. Providemutual Investment Management Company (''PIMC'') serves as investment adviser to the MSF International Portfolio and The Boston Company Asset Management, Inc. serves as its subadviser. Sentinel Advisors Company serves as investment adviser to the MSF Growth Portfolio, Sentinel Growth Portfolio, Aggressive Growth Portfolio and Money Market Portfolio.

The investment objective of the International Portfolio is long-term growth of capital primarily through investments in a diversified portfolio of marketable equity securities of established foreign corporate issuers and companies organized in the U.S. but having their principal activities and interests outside the U.S. This Portfolio also may invest in securities of other foreign issuers such as foreign governments or agencies or instrumentalities of foreign governments.

The investment objective of the Growth Portfolio is intermediate and long-term growth of capital. A reasonable level of income is an important secondary objective. This Portfolio invests primarily in common stocks of companies that its investment adviser believes offer above-average intermediate and long-term growth potential. The Portfolio purchases securities only of companies that have profitable operations and an annual minimum level of sales or revenues of at least $50 million.

The investment objective of the Sentinel Growth Portfolio is long-term growth of capital through equity participation in companies having growth potential believed by its investment adviser to be more favorable than the U.S. economy as a whole, with a focus on relatively well-established companies.

The investment objective of the Aggressive Growth Portfolio is to seek a high level of long-term capital appreciation. This Portfolio invests primarily in securities of companies in new or emerging industries and securities of small capitalization companies and/or unseasoned companies.

The investment objective of the Money Market Portfolio is maximum current income consistent with capital preservation and liquidity. This Portfolio invests exclusively in dollar-denominated money market instruments that present minimal credit risks.

5. SVPT is registered under the Act as an open-end diversified management investment company. SVPT is a series investment company as defined by Rule 18f–2 under the Act and currently comprises five Funds. SVPT will issue a separate series of shares of beneficial interest in connection with each Fund and has registered these shares under the 1933 Act on Form N–1A. National

Life Investment Management Company, Inc. will serve as investment adviser to each of the Funds.

The investment objective of the Sentinel Variable Products Common Stock Fund is to seek a combination of growth of capital, current income, growth of income and relatively low risk as compared with the stock market as a whole. This Fund invests mainly in a diverse group of common stocks of well-established companies, most of which pay regular dividends. The Fund's investment adviser tries to select stocks of leading companies that are financially strong and are selling at attractive prices in relation to their values.

The investment objective of Sentinel Variable Products Mid Cap Growth Fund is growth of capital, by focusing its investments on common stock of mid-sized growing companies. The Fund invests in securities of issuers that its investment adviser believes have favorable growth potential with attractive pricing in relation to this growth potential as well as experienced and capable management. The Fund invests at least 65% of its assets in stocks whose market capitalization is within the range of these comprising the Standard & Poor's 400 Midcap Index.

The investment objective of Sentinel Variable Products Small Company Fund is growth of capital, by investing mainly in common stocks of small and medium companies that its investment adviser believes have attractive growth potential and are attractively valued. The Fund invests at least 65% of its assets in stocks of companies with market capitalizations of less than $2 billion, and the median market capitalization of the Fund's holdings is less than $1 billion.

The investment objective of Sentinel Variable Products Money Market Fund is to seek as high a level of current income as is consistent with stable principal values an liquidity by investing exclusively in dollar-denominated money market instruments, including U.S. government securities, bank obligations, repurchase agreements, commercial paper, and other corporate debt obligations.

6. *Goldman Sachs Variable Insurance Trust (''GSVIT'').* GSVIT is registered under the Act as an open-end diversified management investment company. GSVIT is a series investment company as defined by Rule 18f–2 under the Act and currently comprises nine funds. GSVIT issues a separate series of shares of beneficial interest in connection with each fund and has registered these shares under the 1933 Act on Form N–1A. Goldman Sachs Asset Management International, an affiliate of Goldman, Sachs & Co., serves as investment adviser to the GSVIT International Equity Fund and Goldman Sachs Asset Management, a unit of the Investment Management Division of Goldman, Sachs & Co., serves as investment adviser to the other GSVIT funds whose shares are held by the Accounts.

The investment objective of the International Equity Fund is long-term capital appreciation. Under normal circumstances, the Fund invests substantially all, and at least 65% of its total assets in equity securities of companies that are organized outside the U.S. or whose securities are primarily traded outside the U.S. The Fund may allocate its assets among countries selected by its investment adviser, provided that its assets are invested in at least three foreign countries. The Fund expects to invest a substantial portion of its assets in the securities of issuers located in the developed countries of Western Europe and in Japan.

The investment objective of the Global Income Fund is high total return emphasizing current income. The Fund invests primarily in high quality fixed-income securities of U.S. and foreign issuers and enters into transactions in foreign currency. Under normal market conditions, the Fund has at least 30% of its total assets denominated in U.S. dollars and invests in at least three countries. Except for issuers located in Canada, Germany, Japan, the United Kingdom, and the U.S., not more than 25% of the Fund's total assets is invested in securities of issuers in any single country.

The investment objective of the CORE Small Cap Entity Fund is long-term growth of capital. The Fund seeks this objective through a broadly diversified portfolio or equity securities of U.S. issuers that are included in the Russell 2000 Index at the time of investment. Under normal circumstances, the Fund invests at least 90% of its total assets in equity securities of U.S. issuers, including foreign issuers whose securities are traded in the U.S.

The investment objective of the Mid Cap Value Fund is long-term capital appreciation. Under normal circumstances, the Fund invests substantially all of its assets in equity securities and at least 65% of its total assets in equity securities of mid-cap companies with public stock market capitalizations within the range of market capitalizations of companies comprising the Russell Midcap Index at the time of investment. The Fund also may invest up to 25% of its total assets in foreign securities, including securities of issuers in emerging countries and securities quoted in foreign currencies.

7. *Fidelity Variable Insurance Products Fund and Fidelity Variable Insurance Products Fund II (together, ''FVIP'').* Fidelity Variable Insurance Products Fund and Fidelity Variable Insurance Products Fund II are each registered under the Act as an open-end diversified management investment company. Each also is a series investment company as defined by Rule 18f–2 under the Act and issues a separate series of shares of beneficial interest in connection with each Portfolio and has registered these shares under the 1933 Act on Form N–1A. Fidelity Management & Research Company serves as investment adviser to the FVIP Investment Grade Bond Portfolio and Overseas Portfolio.

The investment objective of FVIP Investment Grade Bond Portfolio is to seek as high a level of current income as is consistent with the preservation of capital. The Portfolio normally invests its assets in U.S. dollar-denominated investment-grade bonds. The Portfolio's investment adviser manages it to have similar overall interest rate risk to the Lehman Brothers Aggregate Bond Index. The investment adviser allocates the Portfolio's assets among different market sectors and different maturities based on its view of the relative value of each sector or maturity.

The investment objective of FVIP Overseas Portfolio is long-term growth of capital. The Portfolio invests at least 65% of its total assets in foreign securities. It invests primarily in common stocks.

8. *Van Eck Worldwide Insurance Trust (''VEWIT'').* VEWIT is registered under the Act as an open-end diversified management investment company. VEWIT is a series investment company as defined by Rule 18f–2 under the Act and currently comprises four Funds. VEWIT issues a separate series of shares of beneficial interest in connection with each Fund and has registered these shares under the 1933 Act on Form N–1A. Van Eck Associates Corporation serves as investment adviser to the VEWIT Worldwide Bond.

The investment objective of the Worldwide Bond Fund is high total return by investing globally, primarily in a variety of debt securities. The Fund's assets generally consist of debt securities rated B or better by Standard & Poor's or Moody's Investor's Service, but it may hold up to 25% of its assets in lower-rated debt issued by governments or government agencies. The Fund's investment adviser expects

the Fund's average maturity to range from three to ten years. There is no limit on the amount that the Fund may invest in one country or in securities denominated in a single currency. Under normal conditions, the Fund's assets will be invested in at least three countries other than the U.S.

9. *American Century Variable Portfolios, Inc. (''ACVP'').* ACVP is registered under the Act as an open-end diversified management investment company. ACVP is a series investment company as defined by Rule 18f–2 under the Act and currently comprises six Funds. ACVP issues a separate series of shares of stock in connection with each Fund and has registered these shares under the 1933 Act on Form N–1A. American Century Investment Management, Inc. serves as investment adviser to the ACVP Value Fund.

The investment objective of the ACVP Value Fund is long-term growth. Income is a secondary objective. The Fund's investment adviser seeks for the Fund stocks of medium to large companies that it believes are undervalued at the time of purchase. The investment adviser follows a value strategy that looks for companies that are temporarily out of favor in the market.

10. The Contracts are flexible premium variable life insurance contracts and individual flexible premium deferred variable annuity contracts. Under each of the Contracts, NLIC reserves the right to substitute shares of one Fund or Portfolio for shares of another, including a Fund or Portfolio of a different Management Company.

11. Under the variable life insurance Contracts, a Contract owner may make unlimited transfers of accumulated value in a Contract year between and among the subaccounts of the relevant Account and NLIC's general account. Currently there is no charge for transfers; however, NLIC reserves the right to assess a $25 charge for each transfer in excess of twelve in any Contract year. Under the variable annuity Contracts, a Contract owner may make unlimited transfers of contract value between and among the subaccounts of the relevant Account and NLIC's general account. Currently there is no charge for transfers, however, NLIC reserves the right to assess a $25 charge for each transfer in excess of twelve in any Contract year.

12. NLIC, on its behalf and on behalf of the Accounts, proposes to make the following substitutions of shares held in those Accounts: (1) Shares of SVPT Common Stock Fund for shares of MSF Growth Portfolio, (2) shares of SVPT Mid Cap Growth Fund for shares of MSF Sentinel Growth Portfolio, (3) shares of SVPT Small Company Fund for shares of MSF Aggressive Growth Portfolio, (4) shares of FVIP Overseas Portfolio for shares of MSF International Portfolio, (5) shares of SVPT Money Market Fund for shares of MSF Money Market Portfolio, (6) shares of FVIP Investment Grade Bond Portfolio for shares of VEWIT Worldwide Bond Fund, (7) shares of FVIP Overseas Portfolio for shares of GSVIT International Equity Fund, (8) shares of FVIP Investment Grade Bond Portfolio for shares of GSVIT Global Income Fund, (9) shares of SVPT Small Company Fund for shares of GSVIT CORE Small Cap Equity Fund, and (10) shares of ACVP Value Portfolio for shares of GSVIT Mid Cap Value Fund. NLIC believes that by making the proposed substitutions in each of the Accounts, they can better serve the interests of owners of the Contracts.

13. *Proposed substitution of shares of SVPT Common Stock Fund for shares of MSF Growth Portfolio, shares of SVPT Mid Cap Growth Fund for shares of MSF Sentinel Growth Portfolio, shares of SVPT Small Company Fund for shares of MSF Aggressive Growth Portfolio, shares of FVIP Overseas Portfolio for shares of MSF International Portfolio, and shares of SVPT Money Market Fund for shares of MSF Money Market Portfolio.* Sentinel Advisors Company (''SAC'') serves as the investment manager and adviser to the MSF Growth Portfolio, Sentinel Growth Portfolio, Aggressive Growth Portfolio and Money Market Portfolio. SAC is a general partnership owned and controlled by four entities: (1) National Retirement Plan Advisors, Inc., an indirect wholly-owned subsidiary of NLIC, (2) Providentmutual Management Co., Inc., an indirect wholly-owned subsidiary of Provident Mutual Life Insurance Company (''PMLIC''), (3) HTK of Delaware, Inc., a wholly-owned subsidiary of The Penn Mutual Life Insurance Company (''Penn Mutual''), and (4) Sentinel Management Company (a partnership of wholly-owned subsidiaries of NLIC, PMLIC and Penn Mutual), which is SAC's managing general partner. NLIC, PMLIC and Penn Mutual are not affiliated persons of each other. Although a joint venture among the three principal controlling parties (NLIC, PMLIC and Penn Mutual) who each maintain a financial interest in SAC, SAC's officers and investment personnel are all employees of NLIC or its affiliates. The ownership percentages of the partners fluctuate as a function of the assets (managed by SAC) contributed by each partner. As of December 31, 1999, the percentages were: NLIC, 62.238%, PMLIC, 33.924%; and Penn Mutual, 3.839%. SAC is located at NLIC's premises, in Montpelier, Vermont.

14. PIMC, an indirect wholly-owned subsidiary of PMLIC, serves as the investment manager and adviser of the MSF International Portfolio. PIMC has engaged The Boston Company Asset Management, Inc. as an investment subadviser to carry out day-to-day portfolio management. PIMC also serves as the investment manager and adviser to five other MSF investment portfolios that are not used by NLIC as investment options in any of its variable life insurance or annuity contracts and which would not be involved in the proposed substitutions.

15. PMLIC and NLIC have discussed the possibility of ending their joint use of MSF as an investment vehicle for both companies' variable life insurance and variable annuity contracts (including the Contracts). NLIC has determined that the manner of accomplishing this separation which would involve the least confusion and disruption to owners of the Contracts would be for it to substitute shares of new Funds or Portfolios for those of MSF Portfolios held by the Accounts. Once the Accounts no longer held shares of MSF's Growth Portfolio, Sentinel Growth Portfolio, Aggressive Growth Portfolio and Money Market Portfolio, SAC would be willing to step down as investment manager and adviser to MSF. Applicants assert that this would permit MSF to make whatever new investment management arrangements (and related changes, if any, in Portfolio investment policies) it desires for PMLIC contract owners invested in the foregoing Portfolios and would avoid the possibility that MSF may propose changes which NLIC and PMLIC could not agree on. The Applicants state that such a disagreement could create unnecessary expense and confusion for owners of both the Contracts and PMLIC contracts, and could result in one or more material irreconcilable conflicts between the interests of Contract owners and owners of PMLIC contracts.

16. The Applicants state that except for the Sentinel Growth Portfolio, most of the assets in these Portfolios belong to owners of variable annuity and variable life insurance contracts issued by PMLIC and its affiliates and only small portions of each consist of assets beneficially owned by owners of the Contracts.

17. NLIC believes that most of the owners of the Contracts wanted (and still want) to invest in Funds managed

or advised by SAC or an affiliate organization or, failing that, in Funds or Portfolios selected by NLIC and over which NLIC has some influence. To facilitate what it believes are the desires of Contract owners, NLIC asked National Life Investment Management Company, Inc. (''NLIMC'') to create SVPT with the four Funds that it proposes to substitute for the MSF Growth, Sentinel Growth, Aggressive Growth and Money Market Portfolios. The Applicants state that these Funds are designed to be substantially identical to the MSF Portfolios that they would replace. The investment objectives are substantially the same. Although the investment policies of the Funds (other than the Money Market Fund) are articulated somewhat differently than those of their MSF counterparts, NLIMC intends to manage the Funds exactly as SAC has managed the MSF Portfolios. Indeed, in recent years, SAC generally managed each of these MSF Portfolios in tandem with a Sentinel Fund of the same type; each of the four Funds has identical investment objectives and policies as those of the appropriate corresponding Sentinel Fund.

18. NLIC believes that the four proposed SVPT Funds will have investment performance substantially similar to that which the corresponding MSF Portfolio would have had if SAC had continued to manage the corresponding MSF Portfolios. Projected expense levels for the SVPT Funds are the same as those experienced in recent years by the MSF Portfolios because each will be capped by NLIC for two years at levels equal to the percentage expense levels experienced by its corresponding MSF Portfolio for the 1999 Fiscal year. Likewise, the management fee rates (including breakpoints) of each SVPT Fund are the same as that of its corresponding MSF Portfolio (for the SVPT Small Company Fund, the corresponding rates will be those of the MFS Aggressive Growth Portfolio). Accordingly, the expense limits for the SVPT Funds for a period of 24 months following the date of the substitution are as follows:

SVPT portfolio	Expense limit (percent)
SVPT Common Stock Fund	.48
SVPT Mid Cap Growth Fund ...	.71
SVPT Small Company Fund	.57
SVPT Money Market Fund	.40

In addition, for those Contract owners who were Contract owners on the date of the substitution, NLIC will not increase Account or Contract expenses for a period of 24 months following the date of the substitution. Also, NLIC believes it likely that most or all of the MSF Portfolios will experience increases in expense levels in the foreseeable future. Moreover, NLIMC expects to earn lower profits managing the Funds than it derived from its share of SAC's profits from managing the corresponding MSF Portfolios. Thus, Applicants assert that NLIC is not proposing to substitute its proprietary Funds for those of MSF in order to increase its profits. The Applicants state that NLIC is merely trying to respond to a management change for MSF by replacing existing proprietary Portfolios with substantially identical proprietary Funds.

19. The Applicants state that, because NLIMC is not currently in a position to manage an international equity portfolio, NLIC has determined to replace the MSF International Portfolio with the FVIP Overseas Portfolio. NLIC believes that the FVIP Overseas Portfolio is an excellent choice in keeping with what its Contract owners expect.

20. NLIC believes that it would be beneficial to Contract owners invested in the foregoing MSF Portfolios to have their investments withdrawn prior to a major restructuring of the management arrangements for the Portfolios. The Applicants state that this is because most of these Contract owners would likely not favor the proposed management changes while most owners of PMLIC contracts invested in the MSF Portfolios would likely favor such changes. Thus, at any meetings of MSF Portfolio shareholders, Applicants assert that management changes proposed by PMLIC would almost certainly be approved and NLIC would then desire to carry out the proposed substitutions. Applicants assert that nothing would be gained by waiting until after such shareholder meetings to carry out the proposed substitutions.

21. The Applicants state that in light of the significant beneficial ownership position of PMLIC (and affiliate) contract owners, Contract owners and future NLIC contract owners cannot expect to command a majority voting position in any of the Portfolios (except Sentinel Growth Portfolio) in the event that they, as a group, desire that a Portfolio move in a direction different from that generally desired by owners of PMLIC (or its affiliates;) contracts. In addition, because MSF is unlikely to offer shares of the Portfolios to any insurer not affiliated with either NLIC or PMLIC, unless the growth in the number of Contracts or the assets supporting them increases at a much greater rate than those of similar contracts issued by PMLIC and its affiliates, owners of Contracts have no prospects of influencing the future direction of these Portfolios.

22. Similarly, to the extent that NLIC can influence a MSF Portfolio (*i.e.,* its board) or the Portfolio's investment adviser, such influence would likely diminish substantially after PIMC becomes the investment adviser.

23. *Proposed substitution of shares of FVIP Investment Grade Bond Portfolio for shares of VEWIT Worldwide Bond Fund, shares of FVIP Overseas Portfolio for shares of GSVIT International Equity Fund, shares of FVIP Investment Grade Bond Portfolio for shares of GSVIT Global Income Fund, shares of SVPT Small Company Fund for shares of GSVIT CORE Small Cap Equity Fund, and shares of ACVP Value Portfolio for shares of GSVIT Mid Cap Value Fund.* The Applicants state that the VEWIT Worldwide Bond Fund and the GSVIT International Equity Fund, GSVIT Global Income Fund, GSVIT CORE Small Cap Equity Fund, and GSVIT Mid Cap Value Fund have proved unpopular with Contract owners. There are currently 40,964 Contractor owners; only 535 of these are invested in these five Funds. Out of a total of 58,511 Contract owners who have ever invested in the 27 currently offered subaccounts, only 665 have ever invested in subaccounts for these five Funds.

24. NLIC does not believe that Contract owners' interest in these Funds will increase significantly in the foreseeable future. The Applicants state that although performance and expense levels in these Funds have generally been reasonable, both the GSVIT and VEWIT Funds have remained small and have attracted almost no interest from Contract owners. In light of the practical limits on the number of investment options that it can offer in the Contracts, NLIC believes that Contract owners' best interests would be served by replacing these Funds with other, larger and potentially more appealing Funds or Portfolios.

25. In each case, NLIC believes that the new Portfolio proposed for substitution is an excellent choice in keeping with what its Contract owners expect. The Applicants state that except for the substitution of FVIP Investment Grade Bond Portfolio for both the VEWIT Worldwide Bond Fund and the GSVIT Global Income Fund, the investment objectives and policies of the new Portfolios are substantially the same as those of the Fund that each would replace. As for the VEWIT Worldwide Bond Fund and the GSVIT Global Income Fund, NLIC's experience

has been that very few Contract owners have an interest in global or international income Funds or Portfolios. NLIC believes that FVIP Investment Grade Bond Portfolio is a sound fixed-income alternative for Contract owners currently invested in VEWIT Worldwide Bond Fund and the GSVIT Global Income Fund which entails lower risk than would other possible alternatives.

26. In the event that the FVIP Overseas Portfolio, FVIP Investment Grade Bond Portfolio or ACVP Value Portfolio has operating expenses (taking into account expense waivers and reimbursements) for any fiscal period (not to exceed a fiscal quarter) during the 24 months following the date of the proposed substitutions equal on an annualized basis to an amount greater than 0.98%, 1.15% and 1.05%, respectively, NLIC will make adjustments to the Account expenses of those subaccounts that invest in the FVIP Overseas Portfolio, FVIP Investment Grade Bond Portfolio, and ACVP Value Portfolio for those Contract owners who were Contract owners on the date of the substitution. These adjustments will limit those Contract owners expenses so that the amount of the new Portfolio's operating expenses together with the corresponding subaccount's Account expenses paid during such period on an annualized basis will be no greater than the sum of the replaced Portfolio's expenses (*i.e.,* 0.98%, 1.15%, or 1.05%, as the case may be) together with the corresponding subaccount's Account expenses during the fiscal year preceding the proposed substitution, which were as follows:

Variable contract	Account expense limit*
Sentinel Advantage VA	1.40
Sentinel Estate Provider VLI	.90
VariTrak VLI	.90
Sentinel Benefit Provider VLI	.32

*As a percentage of the average daily net asset account value on an annual basis.

In addition, as stated above, for those Contract owners who were Contract owners on the date of the substitutions, NLIC will not increase Account or Contract expenses for a period of 24 months following the date of the substitutions.

27. The following charts show the approximate annual management fees, other expenses and total expenses of each of the Funds or Portfolios involved in the proposed substitutions both before and after any reimbursement or fee waivers. The charts also show revenue-sharing that NLIC expects to receive from the investment manager or distributor of various unaffiliated Funds or Portfolios on an annual basis after the proposed substitutions are carried out. Revenue sharing paid to NLIC by the investment manager or distributor of a Fund or Portfolio (as a percentage of NLIC's share of the average daily net assets of the Fund or Portfolio) is to reimburse NLIC for some of the expenses of administering the Contracts. For the Funds and Portfolios other than the GSVIT Funds, the management fees and expenses shown are those for the 1999 fiscal year. For the GSVIT Funds, the management fees and expenses shown are those projected for those funds for the 2000 fiscal year.

Fund	Before reimbursement or fee waiver (percent)	After reimbursement or fee waiver (percent)	Revenue sharing percentage
MSF Growth	0.32	0.32	N/A
	0.16	0.16	
	0.48	0.48	
SVPT Common Stock	0.50	0.48	N/A
	0.52	0.00	
	1.02	0.48	
MSF Sentinel Growth	0.50	0.50	N/A
	0.21	0.21	
	0.71	0.71	
SVPT Mid Cap Growth	0.50	0.50	N/A
	0.52	0.21	
	1.02	0.71	
MSF Aggressive Growth	0.41	0.41	N/A
	0.16	0.16	
	0.57	0.57	
SVPT Small Company	0.50	0.50	N/A
	0.52	0.07	
	1.02	0.57	
MSF International	0.75	0.75	N/A
	0.23	0.23	
	0.98	0.98	
FVIP Overseas	0.73	0.73	0.10
	0.18	0.14	

Fund	Before reimbursement or fee waiver (percent)	After reimbursement or fee waiver (percent)	Revenue sharing percentage
	0.91	0.87	.....
MSF Money Market	0.25 0.15	0.25 0.15	N/A .....
	0.40	0.40	.....
SVPT Money Market	0.25 0.72	0.25 0.15	N/A .....
	0.97	0.40	.....
VEWIT Worldwide Bond	1.00 0.22	1.00 0.22	0.15 .....
	1.22	1.22	.....
FVIP Investment Grade Bond	0.43 0.11	0.43 0.11	0.10 .....
	0.54	0.54	.....
GSVIT International	1.00 0.77	1.00 0.35	0.20 .....
	1.77	1.35	.....
FVIP Overseas	0.73 0.18	0.73 0.14	0.10 .....
	0.91	0.87	.....
GSVIT Global Income	0.90 1.78	0.90 0.25	0.20 .....
	2.68	1.15	.....
FVIP Investment Grade Bond	0.43 0.11	0.43 0.11	0.10 .....
	0.54	0.54	.....
GSVIT CORE Small Cap	0.75 0.75	0.75 0.25	0.20 .....
	1.50	1.00	.....
SVPT Small Company	0.50 0.52	0.50 0.07	N/A .....
	1.02	0.57	.....
GSVIT Mid Cap Value	0.80 0.42	0.80 0.25	0.20 .....
	1.22	1.05	.....
American Century Value	1.00 0.00	1.00 0.00	0.20 .....
	1.00	1.00	.....

28. The Applicants state that by disclosure added to the various May 1, 2000 prospectuses for the Contracts and the Accounts (and possibly by additional subsequent supplements to such prospectuses), all owners of the Contracts have been or will be notified of NLIC's intention to take the necessary actions, including seeking the order requested by this application, to substitute shares of the Portfolios and Funds as described herein.

29. The Applicants state that the additional prospectus disclosure (and any subsequent supplements) about the proposed substitutions will advise Contract owners that from May 1 (or the date of any supplement) until the date of the proposed substitution, owners are permitted to make one transfer of all amounts under a Contract invested in

any one of the affected subaccounts on May 1 (or on the date of the supplement) to another subaccount available under a Contract other than one of the other affected subaccounts without that transfer counting as a ''free'' transfer permitted under a Contract. The Applicants state that the prospectus disclosure also informs (and any subsequent supplements will inform) Contract owners that NLIC will not exercise any rights reserved under any Contract to impose additional restrictions on transfers until at least 30 days after the proposed substitutions.

30. The proposed substitutions will take place at relative net asset value with no change in the amount of any Contract owner's account value or death benefit or in the dollar value of his or her investment in any of the Accounts. Contract owners will not incur any fees or charges as a result of the proposed substitutions, nor will their rights or NLIC's obligations under the Contracts be altered in any way. All expenses incurred in connection with the proposed substitutions, including legal, accounting and other fees and expenses, will be paid by NLIC. In addition, the Applicants state that the proposed substitutions will not impose any tax liability on Contract owners. The proposed substitutions will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the proposed substitutions than before the proposed substitutions. The proposed substitutions will not be treated as a transfer for the purpose of assessing transfer charges or for determining the number of remaining permissible transfers in a Contract year. NLIC will not exercise any right it may have under the Contracts to impose additional restrictions on transfers under any of the Contracts for a period of at least 30 days following the substitutions.

31. The Applicants state that in addition to the prospectus disclosure (and supplements) distributed to owners of Contracts, within five days after the proposed substitutions, any Contract owners who were affected by the substitution will be sent a written notice informing them that the substitutions were carried out and that they may make one transfer of all accumulation or contract value under a Contract invested in any one of the affected subaccounts on the date of the notice to another subaccount available under their Contract without that transfer counting as one of a limited number transfers permitted in a Contract year free of charge. The notice will also reiterate the fact that NLIC will not exercise any rights reserved by it under any of the Contracts to impose additional restrictions on transfers until at least 30 days after the proposed substitutions. The notice as delivered in certain states also may explain that, under the insurance regulations in those states, Contract owners who are affected by the substitutions may exchange their Contracts for fixed-benefit life insurance contracts or annuity contracts, as applicable, issued by NLIC during the 60 days following the proposed substitutions. Current prospectuses for the new Funds or Portfolios will precede or accompany the notices. NLIC also is seeking approval of the proposed substitutions from any state insurance regulators whose approval may be necessary or appropriate.

Applicants' Legal Analysis

1. Section 26(b) of the Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to receive Commission approval before substituting the securities held by the trust. The Investment Company Amendments of 1970 added Section 26(b) to the Act. The Applicants state that prior to the enactment of the 1970 amendments, a depositor of a unit investment trust could substitute new securities for those held by the trust by notifying the trust's security holders of the substitution within five days of the substitution. In 1966, the Commission, concerned with the high sales charges then common to most unit investment trusts and the disadvantageous position in which such charges placed investors who did not want to remain invested in the substituted fund, recommended that Section 26 be amended to require that a proposed substitution of the underlying investments of a trust receive prior Commission approval. Congress responded to the Commission's concerns by enacting Section 26(b) to require that the Commission approve all substitutions by the depositor of investments held by unit investment trusts.

2. The Applicants state that the proposed substitutions appear to involve substitutions of securities within the meaning of Section 26(b) of the Act. Applicants therefore request an order from the Commission pursuant to Section 26(b) approving the proposed substitutions.

3. The Applicants state that the Contracts expressly reserve for NLIC the right, subject to compliance with applicable law, to substitute shares of one Portfolio or Fund held by subaccount of an Account for another. The prospectuses for the Contracts and the Accounts contain appropriate disclosure of this right. NLIC reserved this right of substitution both to protect themselves and their Contract owners in situations where either might be harmed or disadvantaged by circumstances surrounding the issuer of the shares held by one or more of their separate accounts and to afford the opportunity to replace such shares where to do so could benefit itself and Contract owners.

4. The Applicants state that in the case of the proposed substitutions of shares of the four SVPT Funds for those of MSF Portfolios, each MSF Portfolio would be replaced by a Fund with substantially the same investment objectives but which is managed by the investment management team that Contract owners selected.

5. Applicants also state that in the case of the proposed substitution of shares of FVIP Overseas Portfolio for shares of MSF International Portfolio, the interests of Contract owners will be better served primarily because the new Portfolio would more closely resemble the Portfolio that such owners are currently invested in than would the same MSP Portfolio after the proposed management changes. The Applicants state that this investment option under the Contracts would each be replaced by a Portfolio with substantially the same investment objectives.

6. Moreover, with regard to all of the proposed substitutions of MSF Portfolios, the Applicants state that Contract owners would avoid the likely experience of having their current investment option significantly changed and would become invested in Portfolios that are less likely to become controlled by owners of variable contracts issued by a competitor of NLIC.

7. Finally, in the case of the remaining proposed substitutions, the Applicants state that Contract owners will be better served because available subaccounts would represent a broader range of popular investment choices than is currently the case. The Applicants state that these Portfolios are each larger and have both comparable performance and greater marketing appeal than the Portfolios or Funds that they would replace.

8. In addition to the foregoing, Applicants generally submit that the proposed substitutions meet the standards that the Commission and its staff have applied to similar substitutions that have been approved in the past.

9. Applicants anticipate that Contract owners will be at least as well off with the proposed array of subaccounts offered after the proposed substitutions as they have been with the array of subaccounts offered prior to the

substitutions. The Applicants state that the proposed substitutions retain for Contract owners the investment flexibility which is a central feature of the Contracts. If the proposed substitutions are carried out, all Contract owners will be permitted to allocate purchase payments and transfer accumulated values and contract values between and among the same number of subaccounts as they could before the proposed substitutions.

10. The Applicants state that each of the proposed substitutions is not the type of substitution which Section 26(b) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute an investment security in a manner which permanently affected all the investors in the trust, the Contracts provide each Contract owner with the right to exercise his or her own judgment and transfer accumulation and contract values into other subaccounts. Moreover, the Contracts will offer Contract owners the opportunity to transfer amounts out of the affected subaccounts into any of the remaining subaccounts without cost or other disadvantage. The Applicants state that the proposed substitutions, therefore, will not result in the type of costly forced redemption which Section 26(b) was designed to prevent.

11. The Applicants state that the proposed substitutions also are unlike the type of substitution which Section 26(b) was designed to prevent in that by purchasing a Contract, Contract owners select much more than a particular investment company in which to invest their account values. They also select the specific type of insurance coverage offered by NLIC under their Contract as well as numerous other rights and privileges set forth in the Contract. The Applicants state that Contract owners may also have considered NLIC's size, financial condition, type and its reputation for service in selecting their Contract. These factors will not change as a result of the proposed substitutions.

12. Applicants request an order of the Commission pursuant to Section 26(b) of the Act approving the proposed substitutions by NLIC. Applicants submit that, for all the reasons stated above, the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

13. Applicants request an order under Section 17(b) exempting them from the provisions of Section 17(a) to the extent necessary to permit NLIC to carry out the following substitutions by redeeming MSF shares in kind and using the redemption proceeds to purchase SVPT shares; shares of SVPT Common Stock Fund for shares of MSF Growth Portfolio, shares of SVPT Mid Cap Growth Fund for shares of MSF Sentinel Growth Portfolio, shares of SVPT Small Company Fund for shares of MSF Aggressive Growth Portfolio, shares of SVPT Money Market Fund for shares of MSF Money Market Portfolio.

14. Section 17(a)(1) of the Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the Act generally prohibits the persons described above, acting as principals, from knowingly purchasing any security or other property from the registered investment company.

15. Section 2(a)(3) of the Act defines the term ''affiliated person of another person'' in relevant part as:

> (A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such person; (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person; * * *

16. The Applicants state that because shares held by a separate account of an insurance company are owned by the insurance company, NLIC owns of record all of the shares of MSF Sentinel Growth Portfolio. The Applicants state that, therefore, MSF and Sentinel Growth Portfolio is arguably under the control of NLIC notwithstanding the fact the Contract owners may be considered the beneficial owners of those shares held in the Accounts. If MSF and one or more of its Portfolios is under NLIC's control, then NLIC, any person controlling NLIC or any person under common control with NLIC, is an affiliated person of MSF, Sentinel Growth Portfolio and, arguably, other MSF Portfolios. The Applicants state that, similarly, if MSF and one or more of its Portfolios are under NLIC's control, then MSF, Sentinel Growth Portfolio, and, arguably, other MSF Portfolios are affiliated persons of NLIC and of any persons that control NLIC or are under common control with NLIC.

17. The Applicants state that regardless of whether or not NLIC can be considered to control MSF or Sentinel Growth Portfolio or both (or other MSF Portfolios), because NLIC owns of record more than 5% of the shares of MSF Money Market Portfolio, Growth Portfolio, Bond Portfolio, Managed Portfolio, Aggressive Growth Portfolio, Sentinel Growth Portfolio and International Equity Portfolio, it is an affiliated person of MSF and each of the foregoing Portfolios. Applicants also state that MSF and each of the foregoing Portfolios is an affiliated person of NLIC and also is an affiliated person of an affiliated person of any person that controls NLIC or is under common control with NLIC.

18. In addition, the Applicants state that because the investment adviser of each of the foregoing MSF Portfolios is controlled by NLIC or persons controlling NLIC and the investment adviser of each SVPT Fund is controlled by NLIC or persons controlling NLIC, the investment advisers of MSF and SVPT are under common control. Although the Applicants state that they do not believe that this would, by itself, result in MSF (or any of its Portfolios) and SVPT (or any of its Funds) being under common control, to remove any doubt about status of possible transactions involving MSF (or any of its Portfolios) and SVPT (or any of its Funds), Applicants assume, for the purposes of this application, the MSF and SVPT and their Portfolios or Funds could be under common control. Based on the foregoing, MSF and SVPT and the Funds of each may be affiliated persons of each other or affiliated persons of affiliated persons of each other. The Applicants state that each also may be an affiliated person of NLIC or an affiliated person of an affiliated person of NLIC.

19. The Applicants state that the proposed substitutions by NLIC, which may entail the indirect purchase of shares of SVPT Funds with portfolio securities of MSF Portfolios and the indirect sale of portfolio securities of MSF Portfolios for shares of SVPT Funds, therefore may also entail the purchase or sale of such securities by each of the Portfolios or Funds involved, acting as principal, to one of the other Portfolios or Funds and therefore may be in contravention of Section 17(a). In addition, the Applicants state that the participation of NLIC in such purchase and sale transactions could be viewed as entailing the purchase of such securities from MSF Portfolios and the sale of such securities to SVPT Funds by NLIC, acting as principal, and therefore may be in contravention of Section 17(a).

20. Section 17(b) of the Act provides that the Commission may, upon application, grant an order exempting any transaction from the prohibitions of Section 17(a) if the evidence establishes that:

(1) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned;

(2) The proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and records filed under the Act; and

(3) The proposed transaction is consistent with the general purposes of the Act.

21. Rule 17a–7 under the Act exempts from the prohibitions of Section 17(a), subject to certain enumerated conditions, a purchase or sale transaction between registered investment companies or separate series or registered investment companies, which are affiliated persons, or affiliated persons of affiliated persons, of each other, between separate series of a registered investment company, or between a registered investment company or a separate series of a registered investment company and a person which is an affiliated person of such registered investment company (or affiliated person of such person) solely by reason of having a common investment adviser or investment advisers which are affiliated persons of each other, common directors, and/or common officers. The Applicants state that NLIC, MSF, and SVPT (as well as the Portfolios and Funds of MSF and SVPT) cannot, however, rely on Rule 17a–7 in connection with their participation as principals in the proposed MSF/SVPT substitutions because they would not necessarily be affiliated persons of each other solely by reason of having a common investment adviser or affiliated investment advisers, common directors, and/or common officers. Moreover, one of the conditions enumerated in the rule is that the transaction be a purchase or a sale for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available. The Applicants state that the proposed purchase of SVPT shares with MSF investment securities, however, entails the purchase and sale of securities for securities (albeit ones for which market quotations are readily available).

22. Applicants submit that the terms of the proposed substitutions by NLIC, including the consideration to be paid and received, as described in this application, are reasonable and fair and do not involve overreaching on the part of any person concerned. Applicants also submit that the proposed substitutions by NLIC are consistent with the policies of: (1) MSF and of its Growth Portfolio, Sentinel Growth Portfolio, Aggressive Growth Portfolio and Money Market Portfolio; and (2) SVPT and its Common Stock Fund, Mid Cap Growth Fund, Small Company Fund and Money Market Fund, as recited in the current registration statements and reports filed by each under the Act. Finally, Applicants submit that the proposed substitutions are consistent with the general purposes of the Act.

Conclusion

Applicants assert that, for the reasons stated above, the registered order approving the substitutions and exempting in-kind redemptions should be granted.

For the Commission, by Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–28794 Filed 11–8–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of November 13, 2000.

An open meeting will be held on Wednesday, November 15, 2000 at 10 a.m. in Room 6600.

The subject matter of the open meeting scheduled for Wednesday, November 15, 2000 will be:

The Commission will consider adopting rule amendments to its auditor independence requirements. The rule amendments are intended to modernize the Commission's regulations regarding:

(1) Investments by auditors and members of their families;

(2) Auditors' employment relationship; and

(3) The scope of services provided by audit firms to their audit clients.

In addition, the rules would require companies to disclose in their annual proxy statements certain information about non-audit services provided by their auditors during the last fiscal year.

For further information, contact: John Morrissey, or Sam Burke, Office of the Chief Accountant at (202) 942–4400.

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: November 6, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–28873 Filed 11–6–00; 4:28 pm]

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 consider two additional agenda items during the open meeting on Wednesday, November 15, 2000 at 10:00 a.m. Additionally, notice is hereby given that this meeting will be held in Room 1C30, the William O. Douglas Room, not Room 6600 as previously announced.

The subject matters of the additional agenda items will be:

(1) The Commission will consider adopting two rules that would require greater disclosure of order execution and order routing practices by market centers and brokers.

For further information, contact: Susie Cho, Division of Market Regulation at (202) 942–0748; and

(2) Consideration will be given to adopting rules regarding the quotation obligations of options exchanges and market makers, and disclosure by broker-dealers of executions of customer options orders at prices inferior to the best available quote.

For further information contact: Heather Traeger, Division of Market Regulation at (202) 942–0763.

At times, changes in Commission priorities require alternations 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: November 7, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–29010 Filed 11–7–00; 4:00 pm]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 3463]

Future Leaders Exchange (FLEX) Computer Training of Trainers Workshop; Request for Proposals

SUMMARY: The Office of Citizen Exchanges, Division of the NIS Secondary School Initiative of the United States Information Agency's Bureau of Educational and Cultural Affairs, announces an open competition for the Computer Training of Trainers Workshop for the Future Leaders Exchange (FLEX) program. The FLEX program brings secondary students from the New Independent States (NIS) of the former Soviet Union to the U.S. for an academic year. During their time in the U.S., FLEX students live with American host families and attend U.S. high schools.

The primary goal of the Computer Training of Trainers Workshop is to train the participants to educate others in basic computer skills and Internet access. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to conduct a one-week workshop in Spring, 2001 to train a minimum of 25 FLEX students. Participants will be selected from among a group of 1155 students. The maximum grant award will be $60,000. Provision of cost sharing to maximize the number of participants will be looked at very favorably.

Program Information

The recipient of the grant is responsible for developing and conducting the Computer Training of Trainers Workshop based on guidelines set forth by the Division. The grantee organization will also have responsibility for selecting participants in cooperation with their respective placement organizations. Additional responsibilities include coordinating travel arrangements for each participant from his/her host community to the training site and return, and for providing room and board for students during their time at the workshop.

Overview

Workshop participants should be selected according to computer ability and interest as well as motivation to help citizens of their countries. The workshop should provide an opportunity for participants to improve their computer expertise and learn about teaching methodology that will empower them to instruct others. Participants will be provided with tools that will enable them to teach basic computer skills. Participants should also gain awareness of how computers can enhance societal development through communication with appropriate organizations, distance learning projects, local language web sites, etc. Particular attention should be paid to those issues that will be especially significant to people from the former Soviet Union. The program should be arranged for seven days, including arrival and departure.

Selection of workshop participants will be completed by the recipient of the grant in collaboration with placement organizations. Currently, there are 16 organizations that are responsible for placing FLEX students in American homes and schools throughout the U.S. They are also responsible for the students' well-being during their stay in the U.S. For a complete list of these organizations, please refer to the Youth Programs Division web site: *http://exchanges.state.gov/education/citizens/students.*

Guidelines

The workshop should be held in Spring, 2001, preferably in March or April. Proposals must effectively describe the organization's ability to accomplish the following essential components of the program:

1. Provide a Computer Training of Trainers Workshop, as described above and, preferably, at the time period indicated.
2. Include a description of the student selection process.
3. Provide training for organization staff on NIS society and culture.
4. Provide housing and meals for the students throughout the program.
5. Arrange travel for students from their U.S. host communities to the training site, and return, in coordination with FLEX placement organizations. (Note: Students will likely be coming from as many as 25 states.) Provide ground transportation for students in the training area, including to and from airports.
6. Provide opportunities to attend cultural events in the area.
7. Provide staff to assist in case of medical emergencies.
8. Incorporate a program component designed to facilitate students' transition from the computer workshop to their host communities.
9. Include a description of the ways in which students will be encouraged to share what they have learned, both in their U.S. host communities and when they return to their home countries.
10. Provide a mechanism in which participants can continue to communicate with each other upon completion of the workshop.
11. Provide tools for evaluation of the program in terms of its impact on the students and its success in fulfilling the objectives.

A competitive proposal will incorporate important elements of American/NIS culture in sessions that are largely interactive and designed to appeal to high school-age students. The program must be substantive and academic while, at the same time, be paced realistically to meet the needs of young people. A strong proposal will reflect a clear, convincing agenda outlining exactly how the program will be carried out and how outcomes will be accomplished as a result of the grant. Knowledge of the current technological capacity (Internet connectivity, e-mail, hardware and software) of NIS countries is essential.

Significant cost sharing is important since it will enable a greater number of students to participate. Therefore, those proposals that show more generous and creative cost sharing will be more favorably viewed.

Please refer to the Program Objectives, Goals, and Implementation (POGI) section of the Solicitation Package for greater detail regarding the design of component parts as well as other program information.

Budget Guidelines

Organizations must submit proposals that arrange a program for a minimum of 25 students, but may increase the number of participants through cost sharing. Proposals that maximize the number of students will be favorably viewed. One grant will be awarded for this activity. It is estimated that the total costs of the Computer Training of Trainers Workshop will average $2,400 per NIS participant for a one-week program, including U.S. domestic travel.

Applicants must submit a comprehensive budget for the entire program. Awards may not exceed $60,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Please refer to the Solicitation Package for further details and for complete budget guidelines and formatting instructions.

Allowable costs for the program include the following:

(1) Transportation for participants from their host U.S. cities/towns to workshop site
(2) Daily travel to/from workshop site location
(3) Room and board during the time of the workshop
(4) Rental of facilities and equipment

(5) Fees for related activities/excursions
(6) Honoraria for speakers/trainers, as appropriate
(7) Supplies
(8) Security services

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number

All correspondence with the Bureau concerning this RFP should reference the above title and number *ECA/PE/C/PY–01–20.*

FOR FURTHER INFORMATION CONTACT: The Youth Programs Division, Office of Citizen Exchanges, ECA/PE/C/PY, Room 568, U.S. Department of State, 301 4th Street, S.W., Washington, D.C. 20547, phone: 202/619–6299, fax: 202/619–5311, e-mail: <amussman@pd.state.gov> to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Anna Mussman on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at *http://exchanges.state.gov/education/rfps.* Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, D.C. time on December 22, 2000. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and seven copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/PY–01–20, Program Management, ECA/EX/PM, Room 534, 301 4th Street, S.W., Washington, D.C. 20547.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be forwarded to panels of Bureau officers for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.
2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.
3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the organization will meet the program's objectives and plan.
4. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration.
5. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. Proposing organization should demonstrate it has experience with computer education, preferably with youth, as well as familiarity with the culture of the New Independent States (NIS) of the former Soviet Union.
6. *Track Record:* Proposals should demonstrate an institutional record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.
7. *Multiplier effect/impact:* Proposed programs should describe how workshop participants will be motivated and enabled to reach out to other individuals in their home countries.
8. *Follow-on Activities:* Proposals should describe how workshop participants will be provided with knowledge and tools that will prepare them to share information and ideas after their return to their home countries.
9. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit a final report after the project has been completed.
10. *Cost-effectiveness/Cost Sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items

should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation of the Freedom Support Act.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: November 1, 2000.

Helena Kane Finn,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 00–28674 Filed 11–8–00; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 3462]

Bureau of Educational and Cultural Affairs; NIS Community College Partnerships Program

NOTICE: Request for Proposals.

SUMMARY: The Office of Global Educational Programs of the United States Department of State's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program. Accredited institutions offering the two-year Associate's degree and meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to pursue institutional or departmental objectives in international partnerships with counterpart institutions from Georgia, Kazakhstan, Moldova, Russia, Ukraine or Uzbekistan. The underlying purposes of these partnerships should be: (1) To support through teaching, scholarship, and professional outreach from the partner institutions, the transition of the New Independent States to democratic systems based on market economies; and (2) to strengthen mutual understanding and cooperation between the United States and the New Independent States. Eligible fields are education, continuing education or educational administration; the social, political or economic sciences; business/accounting/trade; or journalism/communications.

Program Information

The NIS Community College Partnerships Program is designed to encourage community colleges to share with their educational partners in the NIS their practical experience in designing and implementing programs which provide targeted training in professional fields; provide outreach and services to surrounding communities; and provide education to underserved populations.

In general, underlying the specific objectives of projects funded by this program should be the goal of fostering freedom and democracy through a deepened mutual understanding of fundamental issues and practical applications in the encouragement of civil society, economic growth and prosperity, or the free flow of information. Creative, innovative strategies to address these underlying concerns in the pursuit of clearly defined institutional goals are encouraged. The extension of understanding about these issues through outreach from academic institutions to larger communities of citizens and practitioners is encouraged, particularly by linking educational programs in the NIS to the communities that they serve.

Support from the NIS Community College Partnerships Program is limited to partnerships with institutions in Georgia, Kazakhstan, Moldova, Russia, Ukraine and Uzbekistan. In addition, the Bureau also supports institutional linkages in higher education with partners from these and other countries in the New Independent States of the former Soviet Union through the NIS College and University Partnerships Program. A Request for Proposals for this project was announced on July 27, 2000 with a deadline of January 19, 2001. Community colleges are among the institutions eligible to apply for that competition. The Bureau supports institutional linkages in higher education with partners worldwide through the College and University Affiliations Program; a Request for Proposals for this project was announced separately on June 19, 2000 and has a deadline of November 13, 2000. Applicants interested in either of these two programs should contact the Bureau's Humphrey Fellowships and Institutional Linkages Branch at (202) 619–5289.

Applicant Objectives

In the NIS Community College Partnerships Program, partner institutions may pursue specific institutional goals with support from the Bureau of Educational and Cultural Affairs through exchanges of teachers and administrators for any appropriate combination of teaching, consultation, research, and outreach, for periods ranging from one week (for planning visits) to an academic year.

While the benefits of the project to each of the participating institutions may differ significantly in nature and scope, proposals should outline well-reasoned strategies leading to specific, demonstrable changes at the department or institution in the NIS.

For example, proposals may describe the parameters and possible content of new courses, new research or teaching capacities or methodologies, new or revised curricula or programs, or other changes anticipated as a result of the project. Proposals to pursue a limited number of related thematic objectives at each institution are preferred to proposals addressing a large number of unrelated objectives.

Proposals must focus on curriculum, faculty, and staff development at the NIS partner institution(s) in one or more of the eligible disciplines. Administrative reform at the foreign partner institution should also be a project component. Projects should involve the development of new academic programs or the building and/or restructuring of an existing program or programs, and should promote higher education's role in the transition to market economies and open democratic systems. Whenever feasible, participants

should make their training and personnel resources, as well as the results of their collaborative work, available to the government, NGOs, and business community.

To provide adequate time to meet institutional project objectives, the Program awards grants for periods of approximately three years. The strategy for achieving project goals may include visits in either or both directions, but no single formula is anticipated for the duration, sequence, or number of these visits. However, visits of one semester or more for participants from each of the institutional partners are strongly encouraged. Programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

Although strong budgetary and programmatic emphasis may be given to visits in one direction over another, the benefits of these visits to the sending as well as the receiving sides should be clearly explained in terms of their contributions to the departmental or institutional objectives that the project is designed to achieve. Exchange visits for the purpose of attending conferences are not encouraged except in combination with other grant activities and in support of specific educational objectives at one or more of the participating institutions.

In addition to demonstrating the capacity of each participating institution to contribute to its partner(s), proposals should also explain how this cooperation would enable each of the institutions to address its own needs. Accordingly, applicants are encouraged to describe the needs as well as the capabilities of each participating department as well as the broader social and educational needs which the partner institutions attempt to serve.

Effective proposals will explain the anticipated cooperation in ways that demonstrate that the institutions proposed for participation in the partnership clearly understand one another and are committed to support one another in project implementation. If the proposed partnership would occur within the context of a previous or on-going project, the proposal should explain how the request for Bureau funding would build upon the pre-existing relationship or complement previous and concurrent projects, which must be listed and described in an appendix with details about the amounts and sources of external support.

Proposals should outline a methodology for project evaluation. The evaluation plan should include an updated assessment of the current status of each participating department's and institution's needs at the time of program inception; ongoing formative evaluation to allow for prompt corrective action; and, at the conclusion of the project, summative evaluation of the degree to which the project's objectives have been achieved together with observations about the project's influence within the participating institutions and their surrounding communities or societies. The final evaluation should also include recommendations about how to build upon project achievements, both with and without the Bureau's support. Evaluative observations by external consultants with appropriate subject or regional expertise are especially encouraged. Proposal budgets should reflect evaluation plans.

Proposals must be submitted by the U.S. institutional partner and must include a letter of commitment from the foreign partner(s). Faxed letters are acceptable. The letters should be signed by persons authorized to commit institutional resources to the project. U.S. and foreign partner institutions are encouraged to consult about the proposed project with program office staff in Washington, DC.

Costs

The Bureau's support may be used to defray the costs of the exchange visits as well as the costs of their administration at any partner institution up to a maximum of 20 percent of the total grant, including administrative salaries. All indirect costs are unallowable. However, substantiated indirect costs may be included as part of an institution's cost-sharing. Although grants under this program will be issued to eligible U.S. community colleges, adequate provision for the administrative costs of the project at all partner institutions is encouraged. Administrative salary support may be included for project directors and administrative assistants within the 20 percent maximum that may be allocated to administrative costs. (See the section of the POGI on allowable costs.) Students may participate in the project, but not with the Bureau's support for the costs of their visits.

The proposal may include a request for funding to reinforce the activities of exchange participants through the establishment and maintenance of Internet and/or electronic mail communication facilities as well as through interactive technology or non-technology-based distance-learning programs. However, projects focusing primarily on technology or physical infrastructure development are not encouraged. Proposals that include Internet, electronic mail, and other interactive technologies should discuss how the foreign partner institution would support the costs of such technologies after the project ends. Applicants may propose other project activities not specifically anticipated in this solicitation if the activities reinforce exchange activities and their impact.

The commitment of all partner institutions to the proposed project should be reflected in the cost-sharing which they offer in the context of their respective institutional capacities. Although the contributions offered by U.S. and foreign institutions with relatively few resources may be less than those offered by other applicants, all participating institutions are expected to identify substantial costs to contribute. These costs may include the estimated costs of in-kind contributions for which funds are not exchanged. Consistent with the ''Review Criteria'' for this competition listed elsewhere in this document, proposed cost-sharing will be considered an important indicator of each participating institution's interest in the project and of the institution's potential to benefit from it.

The maximum award in the FY 2001 competition will be $200,000. Requests for amounts smaller than the maximum are eligible. Budgets and budget notes should carefully justify the amounts requested. Grants awarded to organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. Grants are subject to the availability of funds for Fiscal Year 2001.

Projects must conform with the Bureau's requirements and guidelines outlined in the solicitation package for this RFP, which can be obtained by following the instructions given in the section below entitled ''For Further Information''. The Project Objectives, Goals, and Implementation (hereafter, POGI) and the Proposal Submission Instructions (hereafter, PSI), which contain additional guidelines, are included in the Solicitation Package. Proposals that do not follow RFP requirements and the guidelines appearing in the POGI and PSI may be excluded from consideration due to technical ineligibility.

Eligible Fields

The NIS Community College Partnerships Program is limited to the following academic fields:

(1) business/accounting/trade;

(2) education/continuing education/educational administration;

(3) journalism/communications; and

(4) social, political, or economic sciences.

U.S. Institution and Participant Eligibility

In the United States, participation in the program is open to accredited institutions offering the two-year Associate's degree. Applications from consortia and other combinations of cooperating institutions are eligible. Secondary U.S. partners may include relevant non-governmental organizations, non-profit service or professional organizations, or other institutions of higher education. If the lead U.S. institution is responsible for submitting an application on behalf of a consortium, the application must document the lead institution's authority to represent the consortium. With the exception of outside evaluators on contract with the U.S. institution, participants representing the U.S. institution(s) who are traveling under Bureau grant funds must be faculty or staff from the participating institution(s) and must be U.S. citizens.

Foreign Institution and Participant Eligibility

In other countries, participation is open to recognized institutions of post-secondary education, including pedagogical institutes and universities, technical institutes and universities, and vocational training schools. Secondary foreign partners may include relevant governmental and non-governmental organizations, non-profit service or professional organizations. Participants representing the foreign institutions must be faculty or staff of the primary or secondary partner institution, and be citizens, nationals, or permanent residents of the country of the foreign partner, and be qualified to hold a valid passport and U.S. J–1 visa.

Foreign Country and Location Eligibility

Foreign partners from the following countries are eligible:

Georgia;

Kazakhstan;

Moldova;

Russia—Preference will be given to proposals that designate a partner institution outside Moscow and St. Petersburg. Proposals that designate a partner institution in the Russian Far East, Tomsk, or Samara region are encouraged.

Ukraine—Preference will be given to proposals that designate a partner institution outside Kyiv.

Uzbekistan.

Ineligibility

A proposal may be deemed technically ineligible if:

(1) It does not fully adhere to the guidelines established herein and in the Solicitation Package;

(2) It is not received by the deadline;

(3) It is not submitted by the U.S. partner;

(4) One of the partner institutions is ineligible;

(5) The academic discipline(s) is/are not listed as eligible in the RFP, herein;

(6) The amount requested of the Bureau exceeds $200,000 for the three-year project.

Please refer to program-specific guidelines (POGI) in the Solicitation Package for further details.

Grant-Making Authority

Overall grant-making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries . . . to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations . . . and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program cited above is provided through the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992 (FREEDOM Support Act).

Announcement Title and Number

All communications with the Bureau concerning this RFP should refer to the NIS Community College Partnerships Program and reference number ECA/A/S/U–01–10.

Deadline for Proposals

All copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, D.C. time on Friday, February 23, 2001. Faxed documents will not be accepted at any time, nor will documents postmarked on Friday, February 23, 2001 but received on a later date. It is the responsibility of each applicant to ensure compliance with the deadline.

Approximate program dates: Grants should begin on or about August 15, 2001.

Duration: Approximately August 15, 2001–August 14, 2004.

FOR FURTHER INFORMATION: Please contact the United States Department of State, Bureau of Educational and Cultural Affairs, Office of Global Educational Programs, Humphrey Fellowships and Institutional Linkages Branch, State Annex 44 (ECA/A/S/U) room 349, 301 4th Street, S.W., Washington, D.C. 20547, fax: (202) 401–1433 to request a Solicitation Package containing more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify Bureau Program Officer Jonathan Cebra (telephone: 202–619–4126, email: jcebra@pd.state.gov) on all inquiries and correspondence regarding partnerships with institutions in Moldova or Ukraine; please indicate Bureau Program Officer Michelle Johnson (telephone: 202–619–4097, email: johnsonmi@pd.state.gov) on all inquiries and correspondence regarding partnerships with institutions in Russia; please indicate Bureau Program Officer Alanna Bailey (telephone: 202–619–6492, email: abailey@pd.state.gov) on all inquiries and correspondence regarding institutions in any other eligible country.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at: http://exchanges.state.gov/education/rfps. Please read all information before downloading.

Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Bureau staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Submissions

Applicants must follow all instructions given in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Department of State, Bureau of Cultural and Educational Affairs, Ref.: ECA/A/S/U–01–10, Program Management Staff, ECA/EX/PM, Room 534, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to

public affairs sections at U.S. embassies overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be evaluated by independent external reviewers.

The independent external reviewers, who will be professional, scholarly, or educational experts with appropriate regional and thematic knowledge, will provide recommendations and assessments for consideration by the Bureau. The Bureau will consider for funding only those proposals that are recommended for further consideration by the independent external reviewers.

Proposals will also be reviewed by Department staff as well as by the officers of the Office of the Coordinator of United States Assistance to the New Independent States and the public diplomacy sections of U.S. Embassies. Proposals may also be reviewed by the Office of the Legal Advisor or by other offices of the U.S. Department of State. Funding decisions will be made at the discretion of the Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

All reviewers will use the criteria below to reach funding recommendations and decisions. Technically eligible applications will be competitively reviewed according to these criteria, which are not rank-ordered or weighted.

(1) Broad Significance of Institutional Objectives: Project objectives should have significant but realistically anticipated ongoing consequences for the participating institutions that will also contribute to the transition of the New Independent States to market economies and democratic societies.

(2) Clarity and Relevance of Project Objectives to Institutional Needs: Proposed projects should outline clearly formulated objectives that relate specifically to the needs of the participating institutions.

(3) Creativity and Feasibility of Project Implementation: Plan to achieve project objectives should demonstrate the feasibility of doing so during a three-year period by utilizing and reinforcing exchange activities realistically and with creativity.

(4) Institutional Commitment to Cooperation: Proposals should demonstrate significant understanding at each institution of its own needs and capacities and of the needs and capacities of its proposed partner(s), together with a strong commitment, during and after the period of grant activity, to cooperate with one another in the mutual pursuit of institutional objectives.

(5) Project Evaluation: Proposals should outline a methodology for determining the degree to which a project meets its objectives, both while the project is underway and at its conclusion. The final project evaluation should include an external component and should provide observations about the project's influence within the participating institutions as well as their surrounding communities or societies.

(6) *Cost-effectiveness:* Administrative and program costs should be reasonable and appropriate with cost-sharing provided by all participating institutions within the context of their respective capacities and as a reflection of their commitment to cooperate with one another in pursuing project objectives. Although indirect costs are eligible for inclusion among costs to be contributed by the applicant, contributions should not be limited to indirect costs.

(7) *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity by explaining how issues of diversity relate to project objectives for all institutional partners and how these issues will be addressed during project implementation. Proposals should also outline the institutional profile of each participating institution with regard to issues of diversity.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: November 1, 2000.

Helena Kane Finn,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 00–28673 Filed 11–8–00; 8:45 am]

BILLING CODE 4710–11–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2000–8229]

Deepwater Capability Replacement Project: Programmatic Environmental Impact Statement

AGENCY: Coast Guard, DOT.

ACTION: Notice of intent and request for public comments; public meeting notice.

SUMMARY: The Coast Guard announces its intent to prepare a draft Programmatic Environmental Impact Statement (PEIS) for the development of

a proposed action to modernize and replace the aging and technologically obsolete Coast Guard assets required for Deepwater missions. The Deepwater Capability Replacement Project (Deepwater Project) has been initiated to ensure the timely acquisition over the next few decades of appropriate assets for Deepwater missions. The Coast Guard seeks public and agency input on the scope of the PEIS. Specifically, the Coast Guard requests input on any environmental concerns that the public may have related to existing Deepwater assets, the proposal to replace and/or modernize these assets, sources of relevant data or information, and any suggested analysis methods for inclusion in the PEIS.

DATES: Comments must reach the Coast Guard on or before January 19, 2001. Open houses will be held on the following dates:

Oakland, CA, November 27, 2000 from 2 p.m. to 8 p.m.
Seattle, WA, November 28, 2000 from 2 p.m. to 8 p.m.
Juneau, AK, November 30, 2000 from 2 p.m. to 8 p.m.
Cleveland, OH, December 4, 2000 from 2 p.m. to 8 p.m.
Cambridge, MA, December 5, 2000 from 2 p.m. to 8 p.m.
Portsmouth, VA, December 7, 2000 from 2 p.m. to 8 p.m.
New Orleans, LA, December 11, 2000 from 2 p.m. to 8 p.m.
Miami, FL, December 12, 2000 from 2 p.m. to 8 p.m.
Honolulu, HI, December 14, 2000 from 2 p.m. to 8 p.m.

ADDRESSES: The open houses will be held at the following locations:

Oakland, CA—Marriott at City Center, Room 210, 1001 Broadway
Seattle, WA—Seattle Center, Shaw Room, Northwest Rooms Building, 305 Harrison Street
Juneau, AK—Centennial Hall Convention Center, Egan Room, 101 Egan Drive
Cleveland, OH—Cleveland State University, University Center, Room 364, 2121 Euclid Avenue
Cambridge, MA—Radisson Hotel, Ballroom, 777 Memorial Drive
Portsmouth, VA—Tidewater Community College, Waterfront Room, 7000 College Drive
New Orleans, LA—New Orleans Public Library, Smith Branch, 6301 Canal Blvd
Miami, FL—West Dade Regional Library, Auditorium, 9445 SW 24th Street
Honolulu, HI—Honolulu Maritime Center, Pacific Room, Pier 7 Honolulu Harbor

Comments may be submitted in several ways. To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2000–8229), US Department of Transportation, Room PL–401, 400 Seventh Street SW, Washington, DC 20590–0001.

(2) By delivery to Room PL–401 on the Plaza Level of the Nassif Building, 400 Seventh Street SW, Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this notice. Comments will become part of this docket and will be available for inspection or copying at Room PL–401, located on the Plaza Level of the Nassif Building at the above address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also view this docket, including this notice and comments, on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: If you have questions about the project, you may contact LCDR Eric Johnson, Deepwater Environmental & Facilities Planner, by phone at (202) 267–1665 or by e-mail at *ejohnson@comdt.uscg.mil* or at the Coast Guard's Deepwater EIS Web Page at http://www.deepwaterEIS.com. For questions on viewing, or submitting material to the docket, contact Dorothy Beard, Chief, Dockets, DOT, 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to submit comments and related materials on this notice. Persons submitting comments should include their names and addresses, identify this notice (USCG–2000–8229), and the reasons for each comment. You may submit your comments and materials by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address given under **ADDRESSES;** but please submit your comments and materials by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know if they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and materials received during the comment period. For additional information about this notice or the Programmatic Environmental Impact Statement, contact Joan Lang, Deepwater Project NEPA Coordinator (under contract to the Coast Guard), 202–267–0284, or via email at jlang@comdt.uscg.mil.

Open Houses

The Coast Guard intends to hold open houses at the times and locations listed in **DATES** and **ADDRESSES.** Comments on issues that the public feels should be included in the Programmatic Environmental Impact Statement will be accepted at these meetings.

Background Information

Deepwater missions are defined as Coast Guard operations that occur at least 50 nautical miles offshore, or require an extended on-scene presence, long transit times to reach the operations area, and/or the forward deployment of forces. The Coast Guard's current Deepwater assets—medium- and high-endurance cutters, fixed and rotary wing aircraft and their supporting command, control and communications systems—are aging and technologically obsolete. The average age of the Coast Guard's Deepwater cutters is 27 years, making this force older than 40 of the world's 42 major naval fleets. While some cutters have received mid-life upgrades, during the next ten to fifteen years all of our assets will reach the end of their projected service life. As a result of this age, Coast Guard assets lack the ability and technology necessary for efficient and effective mission performance.

The Deepwater Project is the Coast Guard's answer, ensuring the timely acquisition of appropriate resources to remedy the aging fleet dilemma and meeting deepwater mission requirements. These Deepwater missions include search and rescue, maritime law enforcement (MLE, including drug LE, living marine resources LE and alien migrant interdiction), national defense and marine environmental protection. Detailed information about the Project is included in the Appendix to this notice. It may also be found at the Project's web site at *http://www.uscg.mil/deepwater.*

Proposed Action

In accordance with the National Environmental Policy Act (NEPA) of 1969 (Section 102[2][c]), as implemented by the Council on

Environmental Quality regulations (40 CFR Parts 1500–1508), Department of Transportation (DOT) Order 5610.1C (Procedures for Considering Environmental Impacts), and Coast Guard Policy (NEPA: Implementing Procedures and Policy for Considering Environmental Impacts, COMDTINST M16475.1C), the Coast Guard intends to prepare a Programmatic Environmental Impact Statement (PEIS) on the Deepwater Project. The purpose of a PEIS is to develop a high-level approach and direction for implementing a broad policy or program. The Deepwater Project meets those criteria.

NEPA requires federal agencies to consider all significant aspects of environmental impacts that may result from a proposed action, to inform the public of potential impacts and alternatives, and to facilitate public involvement in the assessment process. The core of the impact assessment process is the environmental impact statement, or EIS. The EIS must include, among other topics, discussions of the purpose and need for the proposed action, a description of alternatives, and an evaluation of the environmental impacts of the proposed action and alternatives. Once an EIS is completed, the lead agency prepares a record of decision (ROD), a legally binding document that identifies the agency's decision including any mitigation measures required to offset impacts.

A programmatic EIS is prepared on a ''broad federal action such as the adoption of new agency programs''. When preparing a PEIS, the agency may evaluate the program based on common geographic locations, similarities of impacts, or stages of development. Because no site-specific homeporting and bedding down decisions—allocating assets and staff to Coast Guard facilities—will be made during this stage of the project, the PEIS is expected to facilitate and expedite the preparation of subsequent project-specific NEPA documents.

The PEIS will address the general environmental impacts of each of the three alternative systems being considered for replacement of the current Deepwater system, and the no action alternative, while subsequent analyses will address specific implementing actions, such as homeporting new ships and aircraft. Hence, as the first-tier EIS, the PEIS would cover general issues in a broader program-oriented analysis. Subsequent NEPA documentation will concentrate on the issues specific to the action being considered.

The environment to be affected by the proposed action may be the entire marine and terrestrial coastal region of the continental US, Alaska, Hawaii, the Caribbean, Guam, and the Great Lakes where the Coast Guard has Deepwater facilities, as well as the areas where Deepwater missions are conducted. Deepwater missions are defined as Coast Guard operations that occur at least 50 nautical miles offshore, or require an extended on-scene presence, long transit times to reach the operations area, and/or the forward deployment of forces. The PEIS will discuss the general aspects of the affected environment, such as air quality, water quality, terrestrial and marine vegetation and wildlife, endangered species and their habitat, wetlands, historic and cultural resources, public safety, and land use. The PEIS will compare the potential environmental impacts and benefits that would result from each of the three alternatives and the no action alternative. For the purposes of the PEIS, the location of these assets throughout the country will be designated on a regional level. As required by NEPA, the Coast Guard also will analyze the ''no action'' alternative as a baseline for comparing the impacts of the proposed project.

The Coast Guard encourages public participation in the PEIS process. Presently, the Coast Guard is conducting a nationwide public scoping process to help identify environmental issues to be addressed in the PEIS. The scoping period will be 45 days starting with publication of this notice in the **Federal Register**. The public and agencies will be able to select from a variety of outreach tools to learn about the Deepwater Project. Multiple methods for providing comments will be available, including mail, Internet, and fax. These opportunities will be widely publicized through multiple news media and the Deepwater Project EIS web site at http://www.DeepwaterEIS.com. Information on the Coast Guard's Deepwater mission can be found at *http://www.uscg.mil/deepwater*. In addition, the Coast Guard will conduct open houses according to the schedule provided in this **Federal Register** notice (see **DATES**). This process is designed to ensure the public participation process is accessible to all interested parties and that it meets the goal established by Executive Order 12898 (Environmental Justice) by including all affected low-income and minority populations in the public participation process.

In order to obtain maximum public input and participation, the USCG will release all relevant information allowed by law. Some procurement sensitive and other information may be withheld from public documents. To the fullest extent possible, the USCG will segregate any procurement sensitive information that is exempt from disclosure under the Freedom of Information Act (FOIA) into an appendix to facilitate public review of the remainder of the NEPA document. If segregation of information exempt from FOIA would leave essentially meaningless material, the USCG will withhold portions of the NEPA document or the entire NEPA document from the public. However, the USCG shall circulate the complete NEPA document including procurement sensitive information withheld from public review, to the USCG decision makers, in accordance with the CEQ, DOT and USCG Regulations.

Following the scoping process, the Coast Guard will prepare a Draft PEIS. Unless the USCG finds that the entire NEPA document must be withheld from public review, a notice of availability will be published in the **Federal Register** and national newspapers when the Draft PEIS is available. Public notices will be mailed or e-mailed to those on the PEIS distribution list. This period will provide the public with an opportunity to review the document and to offer appropriate comments. Public hearings may be held during the review period to capture verbal comments on the Draft PEIS. If public hearings will be held, the time and place of the hearings will be announced in the **Federal Register** and other media.

Unless the USCG finds that the entire NEPA document must be withheld from public review, the comments received during the Draft PEIS review period will be published and made available in the Final PEIS. A notice of availability of the Final PEIS will be published in the **Federal Register** and in other public notices. NEPA provides for a 30-day comment period after publication of the Final PEIS, during which the public may comment on the adequacy of responses to comments and the Final PEIS. After that time, a ROD detailing the Coast Guard's decision identifying the selected alternative will be prepared and published in the **Federal Register**. The entire ROD will be available for public review regardless of whether parts or all of the DEIS and FEIS must be withheld from the public.

Dated: November 3, 2000.

R.J. Casto,

RADM, USCG, Assistant Commandant for Acquisition.

Appendix

The Coast Guard Deepwater Capabilities Replacement Project

The Coast Guard operates in inland, coastal, and Deepwater maritime regions.

Deepwater missions are defined as operations that occur at least 50 nautical miles offshore, or require an extended on-scene presence, long transit times to reach the operations area, and/or the forward deployment of forces. Deepwater missions typically require Coast Guard personnel to be involved in long-term, continuous missions, often with deployments away from home stations for several months on end. These missions may also take place in severe environments from arctic to tropical, 24 hours a day, wherever the Coast Guard's presence is required.

Overall, the Coast Guard performs fourteen statutorily mandated missions in the Deepwater regions around the globe. These fall into four main categories: Maritime Law Enforcement; Maritime Safety; National Defense; and Marine Environmental Protection.

Maritime Law Enforcement includes: Living marine resources enforcement, drug interdiction, alien migrant interdiction and general law enforcement.

Maritime Safety includes: Search and rescue (SAR) and the International Ice Patrol.

National Defense includes: General defense operations, maritime intercept operations, deployed port security and defense operations, environmental defense operations, and peacetime military engagement.

Marine Environmental Protection includes: Maritime pollution enforcement and response, lightering zone enforcement and foreign vessel inspection.

In 1999, an Interagency Task Force on United States Coast Guard Roles and Missions was appointed to ''provide advice and recommendations regarding the appropriate roles and missions for the Coast Guard through the year 2020,'' with special attention to the Deepwater missions. The Task Force's findings affirmed that the Coast Guard must remain a military, multi-mission, maritime service in the 21st century to meet national policies and statutory mandates. The Task Force further recommended that the Coast Guard forces possess inherent operational flexibility and adaptability, including the ability to operate alongside the forces and personnel of other US armed services, US civilian agencies, and nations. In addition, the Coast Guard must strive to be cost effective across all missions.

The Coast Guard's Deepwater ships and aircraft (assets) are aging and technologically obsolete. This equipment was originally acquired from the early 1960s to the mid 1980s. The average age of the Deepwater cutters is 27 years old, making this force older than 36 of the world's 41 major naval fleets. Although some cutters received upgrades, during the next 10 years these cutters will reach the ends of their projected service lives.

Consequently, Deepwater assets lack fundamental capabilities and technologies necessary for efficient and effective mission performance. Examples include poor sensors and night operations capability, inadequate communication systems among Coast Guard units and forces of other services, agencies and navies of other countries. In addition, antiquated technology increases operating and maintenance hours and costs, placing greater demands on the logistics infrastructure.

[FR Doc. 00–28779 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCGD08–00–025]

Lower Mississippi River Waterway Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Lower Mississippi River Waterway Safety Advisory Committee (LMRWSAC) will meet to discuss various issues relating to navigational safety on the Lower Mississippi River and related waterways. The meeting will be open to the public.

DATES: LMRWSAC will meet on Thursday, December 7, 2000, from 9 a.m. to 12 noon. This meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before November 20, 2000. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before November 20, 2000.

ADDRESSES: LMRWSAC will meet at the Ernest N. Morial Convention Center, 900 Center Blvd, New Orleans, LA Hall D, Room 338 during the International Workboat Show. Send written material and requests to make oral presentations to LT(jg), Zeital Merchant, Committee Administrator, c/o Commanding Officer, Marine Safety New Orleans, 1615 Poydras Steet, New Orleans, LA 70112. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact LT(jg) Zeita Merchant, Committee Administrator, telephone (504) 589–4222, Fax (504) 589–4241.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

Lower Mississippi River Waterway Safety Advisory Committee (LMRWSAC)

The agenda includes the following:

(1) Introduction of committee members.
(2) Election of Committee Chairman & Vice Chairman
(3) Remarks by RADM P. Pluta, Committee Sponsor.
(a). Establishment of a working group to develop strategic planning to guide LMRWSAC.
(4) Approval of the April 26, 2000 minutes.
(5) Old Business:
Captain of the Port status report
VTS update report
PORTS update report
River crossing dredging ranges side markings
(6) New Business:
(7) Next meeting.
(8) Adjournment.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Committee Administrator no later than November 20, 2000. Written material for distribution at the meeting should reach the Coast Guard no later than November 20, 2000. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of the meeting, please submit 30 copies to the Committee Administrator at the location indicated under Addresses no later than November 20, 2000.

Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meetings, contact the Committee Administrator at the location indicated under Addresses as soon as possible.

Dated: October 16, 2000.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 00–28701 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice For Waiver of Aeronautical Land-use Assurance Lawrence Municipal Airport, North Andover, Massachusetts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for Public Comments. Notice of Intent to Waiver with respect to land.

SUMMARY: The FAA is considering a proposal that a portion of the airport (approximately 2 acres located on Sutton Street along the southwest corner of the airport) is not needed for aeronautical use, as shown on the Airport Layout Plan. There appear to be no impacts to the airport by allowing the airport the use of the land under a 45 year lease, for public self storage units. Approximately 20 percent of the land was acquired by the airport under FAA Project No. 9–19–007–0804 (parcel 9 and a portion of parcel 12).

In accordance with section 47107(h) of title 49, United States Code, the notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

The purpose of this lease is to make use of surplus land to generate needed revenue for the operations and maintenance of the airport.

DATES: Comments must be received on or before December 11, 2000.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. William Cronan, Special Projects Officer, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: William Cronan, Special Projects Officer, 12 New England Executive Park, Burlington, Massachusetts 01803. Telephone number 781–238–7610/Fax number 781–238–7608. Documents reflecting the FAA action may be reviewed at the 16 New England Executive Park, Burlington, Massachusetts 01803 or at the Lawrence Municipal Airport 492 Sutton Street, North Andover, Massachusetts 01845.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA intends to authorize the release of the subject airports property at the Lawrence Municipal Airport, North Andover, Massachusetts. The disposition of proceeds from the leasing of the airport property will be in accordance with FAA's policy and procedures concerning the use of the airport revenue, published in the **Federal Register** on February 16, 1999.

Issued in Burlington Massachusetts on October 30, 2000.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 00–28732 Filed 11–8–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Index of Administrator's Decisions and Orders in Civil Penalty Actions; Publication

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of publication.

SUMMARY: This notice constitutes the required quarterly publication of an index of the Administrator's decisions and orders in civil penalty cases. This publication represents the quarter ending on September 30, 2000. This publication ensures that the agency is in compliance with statutory indexing requirements.

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SUPPLEMENTARY INFORMATION: The Administrative Procedure Act requires Federal agencies to maintain and make available for public inspection and copying current indexes containing identifying information regarding materials required to be made available or published. 5 U.S.C. 552(a)(2). In a notice issued on July 11, 1990, and published in the **Federal Register** (55 FR 29148; July 17, 1990), the FAA announced the public availability of several indexes and summaries that provide identifying information about the decisions and orders issued by the Administrator under the FAA's civil penalty assessment authority and the rules of practice governing hearings and appeals of civil penalty actions. 14 CFR Part 13, Subpart G.

The FAA maintains an index of the Administrator's decisions and orders in civil penalty actions organized by order number and containing identifying information about each decision or order. The FAA also maintains a cumulative subject-matter index and digests organized by order number. The indexes are published on a quarterly basis (*i.e.,* January, April, July, and October.)

The FAA first published these indexes and digests for all decisions and orders issued by the Administrator through September 30, 1990. 55 FR 45984; October 31, 1990. The FAA announced in that notice that only the subject-matter index would be published cumulatively and that the order number index would be non-cumulative. The FAA announced in a later notice that the order number indexes published in January would reflect all of the civil penalty decisions for the previous year. 58 FR 5044; 1/19/93.

The previous quarterly publications of these indexes have appeared in the **Federal Register** as follows:

Dates of quarter	Federal Register publication
11/1/89–9/30/90	55 FR 45984; 10/31/90.
10/1/90–12/31/90 ..	56 FR 44886; 2/6/91.
1/1/91–3/31/91	56 FR 20250; 5/2/91.
4/1/91–6/30/91	56 FR 31984; 7/12/91.
7/1/91–9/30/91	56 FR 51735; 10/15/91.
10/1/91–12/31/91 ..	57 FR 2299; 1/21/92.
1/1/92–3/31/92	57 FR 12359; 4/9/92.
4/1/92–6/30/92	57 FR 32825; 7/23/92.
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4/1/00–6/30/00	65 FR 47557; 8/2/00.

The civil penalty decisions and orders, and the indexes and digests are available in FAA offices. Also, the Administrator's civil penalty decisions have been published by commercial publishers (Hawkins Publishing Company and Clark Boardman Callaghan) and are available on computer on-line services (Westlaw, LEXIS, Compuserve and FedWorld).

A list of the addresses of the FAA offices where the civil penalty decisions may be reviewed and information regarding these commercial publications and computer databases are provided at the end of this notice. Information regarding the accessibility of materials filed in recently initiated civil penalty cases in FAA civil penalty cases at the DOT Docket and over the Internet also appears at the end of this notice.

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Civil Penalty Actions—Orders Issued by the Administrator

Digests

(Issued between July 1, 2000, and September 30, 2000)

The digests of the Administrator's final decisions and orders are arranged by order number, and briefly summarize key points of the decision. The following compilation of digests includes all final decisions and orders issued by the Administrator from July 1, 2000, to September 30, 2000. The FAA will publish non-cumulative supplements to this compilation on a quarterly basis (*e.g.,* April, July, October, and January of each year).

These digests do not constitute legal authority, and should not be cited or relied upon as such. The digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

In the Matter of David E. Everson, d/b/a North Valley Helicopters

Order No. 2000–15 (8/7/00)

Appeal Dismissed. Complaint withdrew its notice of appeal from the law judge's initial decision. Therefore, Complainant's appeal is dismissed.

In the Matter of Warbelow's Air Ventures, Inc.

Order No. 2000–16 (8/8/00)

Reconsideration Denied. Warbelow's filed a second, repetitive petition to reconsider FAA Order No. 2000–3. The Rules of Practice provide that the FAA decisionmaker will not consider repetitious petitions, and may summarily dismiss them. 14 CFR § 13.234(d). Warbelow's second petition to reconsider is summarily dismissed as repetitive.

In the Matter of Howard Gotbetter

Order No. 2000–17 (8/11/00)

Alleged Assault on Flight Attendant. On appeal, Gotbetter argues that the record does not support the law judge's finding that he assaulted a flight attendant in violation of 14 CFR 91.11.

Credibility findings. The law judge's credibility findings will not be overturned because Gotbetter has not given any persuasive reason to do so.

Alleged Bias. Gotbetter argues that the ALJ was biased against him. Gotbetter claims that the law judge is in essence ''a puppet'' of the FAA, and FAA is in turn a puppet of the airlines. Gotbetter is wrong; the law judge is not an employee of the FAA. The United States Department of Transportation employs the law judge.

Gotbetter also contends that the law judge was improperly ''cozy'' with agency counsel because the law judge renewed his acquaintance with agency counsel after the hearing and discussed agency counsel's new baby. Merely making small talk with counsel does not rise to the level of a showing of bias.

''Guilt by Association.'' Gotbetter argues that the law judge unfairly penalized him for the actions of his traveling companion. This argument is rejected—the law judge specifically declined to hold Gotbetter responsible for his traveling companion's actions.

Conclusion. The law judge's decision assessing a $500 civil penalty is affirmed.

In the Matter of California Helitech

Order No. 2000–18 (8/11/00)

Operating helicopters with open discrepancies on the squawk sheets. California Helitech, a helicopter pilot school certificated under Part 141, operated two helicopters with open maintenance discrepancies on the squawk sheets. The law judge held that California Helitech violated 14 CFR 91.405(a) and (b) and assessed a $2,200 civil penalty.

Airworthiness. Complainant did not allege that the helicopters were unairworthy. The law judge precluded the introduction of testimony regarding whether the helicopters were airworthy at the hearing. Nonetheless, he held in the initial decision that California Helitech operated the helicopters in an unairworthy condition. The Administrator reversed the law judge's ruling that the helicopters were unairworthy. The Administrator held the finding was unfair in light of the preclusion of evidence at the hearing, and it was unnecessary in light of the absence of any allegation that the helicopters were operated in an unairworthy condition.

The Administrator rejected California Helitech's argument that there should have been no finding of violations because the squawk sheets are required under Part 141 but Complainant did not prove that the flights were conducted under Part 141. The Administrator held that while the squawk sheet is a Part 141 form, the requirement to repair and make appropriate entries in maintenance records arose under Part 91. Regardless of the format of the discrepancy listing, Section 91.405's requirements still apply.

Sequestering of Witnesses. The law judge granted the motion to sequester the witnesses at the beginning of the hearing. Complainant's witness, Inspector Magill, testified during Complainant's case-in-chief, and again as a rebuttal witness, but he was not sequestered during the testimony of the other witnesses. The Administrator held that California Helitech should have objected at the hearing so that the law judge would have had an opportunity to bar the inspector from retaking the witness stand. Moreover, there was little, if any, need to sequester Inspector Magill because on rebuttal he testified primarily as an expert, not a percipient, witness.

Civil Penalty Appropriate Despite California Helitech's Surrender of its Part 141 Certificate. The need for a sanction with a punitive and deterrent effect is not obviated by California Helitech's voluntary surrender of its pilot school certificate.

Sanction. The Administrator affirmed the $2,200 civil penalty, finding it to be reasonable in light of the proven violations.

In the Matter of James J. Horner

Order No. 2000–19 (8/11/00)

Alleged entering of sterile area without submitting to screening. Horner was late for a flight. He presented his carry-on bag for x-ray inspection at the security checkpoint. The screener, who was unable to determine the nature of one of the objects inside the bag, handed it to a bag checker for a physical search. Horner ''grabbed'' the bag from the bag checker even though the search was not finished and set off for the gate. The supervisor called out to Horner to stop, but he did not. A screener followed him to the gate and told the ticket agent not to let him board because his bag had not been searched thoroughly. The screener asked Horner if he could search the bag, and Horner agreed, but he threw it on the ground and kicked it. He was verbally abusive appeared extremely angry and scary. The screener searched the bag and found nothing threatening. The law judge held that Horner violated 14 CFR 107.20 and assessed a $750 civil penalty.

Alleged Lack of Fair Hearing. On appeal, Horner argued that the agency attorney violated FRCP Rule 26 by failing to provide him, within 30 days before the hearing, a list of evidence the agency might introduce at the hearing. Horner contends he did not present any witnesses because he thought the agency would not present any evidence. The FRCP do not apply in FAA civil penalty proceedings, and the FAA civil penalty rules of practice do not contain a provision that mandates disclosure

without a discovery request. Horner was free to submit discovery requests to the agency attorney, but he failed to do so. His claim that he was denied a fair hearing is rejected.

Lateness of Initial Decision. Horner also argued that the case against him should have been dismissed because the law judge failed to issue a decision within 30 days after the hearing, as required by 14 CFR 13.232(c). The law judge's decision was issued approximately 3 months late. Horner has neither asserted nor shown any prejudice resulting from the delay. He could have moved to compel the law judge to issue the decision, but did not.

Conclusion. The Administrator affirmed law judge's decision assessing a $750 civil penalty.

In the Matter of Phillips Building Supply

Order No. 2000–20 (8/11/00)

Hazardous Materials. In this case, five 1-gallon cans of Formica glue were shipped aboard a UPS cargo plane without proper packaging, labeling, marking, and without complying with other requirements of the Hazardous Materials Regulations. The shipment was found leaking in a UPS facility. The agency attorney sought a $20,000 civil penalty, but the law judge reduced it to $9,000, and the agency attorney appealed.

Sanction. The law judge improperly used a mathematical, formulaic approach of multiplying the number of violations by a set dollar amount. This was not appropriate, as a violation of one regulation may be more or less serious than of another.

The law judge improperly reduced the $20,000 proposed civil penalty to $9,000 because of Phillips' first effort at training. While it was a corrective measure justifying a reduction, it deserves only a minor one. Phillips' own witness characterized the training as ''cursory.''

Further, the law judge improperly reduced the civil penalty based on Phillips' attorney's statement that he advised his client of the need for further training. There was no indication that Phillips accepted its attorney's advice. Moreover, further training after a hearing would be so long after the incident that it could not be regarded as a mitigating factor. Also, it is beyond the authority of the law judge to impose a training requirement as part of the sanction; the law judge's authority is limited to imposing a civil penalty.

In addition, the law judge improperly based his sanction determination in part on Phillips' promise not to ship hazardous materials any more. The case law indicates that a promise not to ship hazardous materials in the future does not represent the type of positive corrective action that warrants consideration in determining the penalty. Such a company policy may be changed at any time.

After considering all the factors required by the statute—

1. the nature, circumstances, extent, and gravity of the violation (undeclared shipments pose a special risk and are extremely dangerous; FAA inspector's testimony that given the closed ventilation system, if the glue leaked, vapors could cause crew to succumb; the package actually leaked, and onto some food, which could have caused people to get sick if they ingested it; on the other hand, it was a relatively small shipment; it was not flammable, corrosive, or radioactive);

2. the violator's degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue to do business (Phillips is a business rather than an individual; while it is not a manufacturer, it regularly handles hazardous materials; prior violations are not present; and Phillips has not alleged financial hardship); and

3. other matters that justice requires (Phillips did take some corrective action—i.e., two employees participated in a UPS training course; this doesn't justify a large adjustment, but it is still mitigating).

Conclusion. Based on the statutory factors, the $9,000 civil penalty assessed by the law judge is too low, but the $20,000 sought by Complainant is excessive. A $14,000 civil penalty is imposed.

In the Matter of Daniel A. Martinez

Order No. 2000–21 (8/11/00)

Untimely Supplemental Brief Rejected. Order No. 2000–7 directed Martinez to file a supplemental brief explaining why he failed to answer the complaint and the law judge's order to show cause. Martinez lacked good cause for failing to file his supplemental brief by the deadline. Thus, his supplemental brief is rejected.

Community Service. In any event, the relief Martinez sought on appeal—to substitute community service for the civil penalty—is not available. The governing statute and regulations provide only for monetary penalties in FAA civil penalty actions; they do not provide for community service as a possible penalty.

Conclusion. Martinez's appeal is dismissed, the law judge's initial decision is affirmed, and a civil penalty of $2,200 is assessed.

Commercial Reporting Services of the Administrator's Civil Penalty Decision and Orders

Commercial Publications: The Administrator's decisions and orders in civil penalty cases are available in the following commercial publications:

Civil Penalty Cases Digest Service, published by Hawkins Publishing Company, Inc., P.O. Box 480, Mayo, MD, 21106, (410) 798–1677;

Federal Aviation Decisions, Clark Boardman Callaghan, a subsidiary of West Information Publishing Company, 50 Broad Street East, Rochester, NY 14694, 1–800–211–9428.

2. *On-Line Services.*The Administrator's decisions and orders in civil penalty cases are available through the following on-line services:

- Westlaw (the Database ID is FTRAN–FAA)
- LEXIS [Transportation (TRANS) Library, FAA file.]
- Compuserve
- FedWorld

Docket

The FAA Hearing Docket is located at FAA Headquarters, 800 Independence Avenue, SW, Room 926A, Washington, DC, 20591 (tel. no. 202–267–3641). The clerk of the FAA Hearing Docket is Ms. Stephanie McClain. All documents that are required to be filed in civil penalty proceedings must be filed with the FAA hearing Docket Clerk at the FAA Hearing Docket. (See 14 CFR 13.210.) Materials contained in the docket of any case not containing sensitive security information (protected by 14 CFR Part 191) may be viewed at the FAA Hearing Docket.

In addition, materials filed in the FAA Hearing Docket in non-security cases in which the complaints were filed on or after December 1, 1997, are available for inspection at the Department of Transportation Docket, located at 400 7th Street, SW, Suite PL–401, Washington, DC, 20590, (tel. no. 202–366–9329.) While the originals are retained in the FAA Hearing Docket, the DOT Docket scans copies of documents in non-security cases in which the complaint was filed after December 1, 1997, into their computer database. Individuals who have access to the Internet can view the materials in these dockets using the following Internet address: http://dms.dot.gov.

FAA Offices

The Administrator's decisions and orders, indexes, and digests are available for public inspection and copying at the following location in FAA headquarters:

FAA Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., Room 926A, Washington, DC 20591; (202) 267–3641

These materials are also available at all FAA regional and center legal offices at the following locations:

Office of the Regional Counsel for the Aeronautical Center (AMC–7), Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169; (405) 954–3296

Office of the Regional Counsel for the Alaskan Region (AAL–7), Alaskan Region Headquarters, 222 West 7th Avenue, Anchorage, AL 99513; (907) 271–5269

Office of the Regional Counsel for the Central Region (ACE–7), Central Region Headquarters, 601 East 12th Street, Federal Building, Kansas City, MO 64106; (816) 426–5446

Office of the Regional Counsel for the Eastern Region (AEA–7), 1 Aviation Plaza, 159–30 Rockaway Blvd., Springfield Gardens, NY 11434; (718) 533–3285

Office of the Regional Counsel for the Great Lakes Region (AGL–7), Great Lakes Region Headquarters, O'Hare Lake Office Center, 2300 East Devon Avenue, Suite 419, Des Plaines, IL 60019: (847) 294–7085

Office of the Regional Counsel for the New England Region (ANE–7), New England Regional Headquarters, 12 New England Executive Park, Room 401, Burlington, MA 01803; (781) 238–7040

Office of the Regional Counsel for the Northwest Mountain Region (ANM–7), Northwest Mountain Region Headquarters, 1601 Lind Avenue, SW, Renton, WA 98055; (425) 227–2007

Office of the Regional Counsel for the Southern Region (ASO–7), Southern Region Headquarters, 1701 Columbia Avenue, College Park, GA 30337; (404) 305–5200

Office of the Regional Counsel for the Southwest Region (ASW–7), Southwest Region Headquarters, 2601 Meacham Blvd., Fort Worth, TX 76137; (817) 222–5064

Office of the Regional Counsel for the Technical Center (ACT–7), William J. Hughes Technical Center, Atlantic City International Airport, Atlantic City, NJ 08405; (609) 485–7088

Office of the Regional Counsel for the Western-Pacific Region (AWP–7), Western-Pacific Region Headquarters, 15000 Aviation Boulevard, Hawthorne, CA 90261; (310) 725–71000

Issued in Washington, DC on October 31, 2000.

James S. Dillman,

Assistant Chief Counsel for Litigation.

[FR Doc. 00–28850 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–62]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption Part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 29, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to §§ 11.85 and 11.91 of part 11 of 14 CFR.

Issued in Washington, DC, on November 3, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 28530.

Petitioner: Mr. John A. Porter.

Section of the 14 CFR Affected: 14 CFR 91.109(a) and (b)(3).

Description of Relief Sought/Disposition: To allow Mr. Porter to conduct certain flight instruction and simulated instrument flights to meet recent instrument experience requirements, in certain Beechcraft airplanes equipped with a functioning throwover control wheel in place of functioning dual controls.

Grant, 10/06/00, Exemption No. 6521B.

Docket No.: 28514.

Petitioner: Mr. Henry D. Canterbury.

Section of the 14 CFR Affected: 14 CFR 91.109(a) and (b)(3).

Description of Relief Sought/Disposition: To allow Mr. Canterbury to conduct certain flight instruction and simulated instrument flights to meet recent instrument experience requirements in certain Beechcraft airplanes equipped with a functioning throwover control wheel in place of functioning dual controls.

Grant, 10/05/00, Exemption No. 6520B.

Docket No.: 29922.

Petitioner: Mr. Richard E. Druschel.

Section of the 14 CFR Affected: 14 CFR 91.109(a) and (b)(3).

Description of Relief Sought/Disposition: .To allow Mr. Druschel to conduct certain flight instruction and simulated instrument flights to meet recent instrument experience requirements in certain Beechcraft airplanes equipped with a functioning throwover control wheel in lieu of functioning dual controls.

Grant, 10/06/00, Exemption No. 7367.

Docket No.: 29937.

Petitioner: Southern California Aviation, Inc.

Section of the 14 CFR Affected: 14 CFR 145.35 and 145.37(b).

Description of Relief Sought/Disposition: To permit SCAI to add transport category airplanes up to and including the Boeing 747–400 airplane to its FAA-certificated repair station limited airframe rating without completely meeting the housing and facility requirements for such airplanes.

Grant, 10/06/00, Exemption No. 7364.

[FR Doc. 00–28738 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000PE–63]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption Part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 29, 2000.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR §§ 11.85 and 11.91 of part 11.

Issued in Washington, D.C., on November 3, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2000–8051.

Petitioner: Castroville Area Chamber of Commerce.

Section of 14 CFR Affected: 14 CFR 135.251, 135.255, 135.353 and appendixes I and J to part 121.

Description of Relief Sought/Disposition: To permit CACC to conduct local sightseeing flights at Castroville Municipal Airport, Castroville, Texas, for a two-day charitable event benefiting the Tourism Committee in November 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 10/24/2000, Exemption No. 7372.

Docket No.: FAA–2000–8162.

Petitioner: Evergreen Helicopters, Inc.

Section of 14 CFR Affected: 14 CFR 133.45(e)(1).

Description of Relief Sought/Disposition: To permit Evergreen to conduct Class D rotorcraft-load combination operations with an A109K–2 helicopter certificated in the normal category under 14 CFR part 27.

Grant, 10/27/2000, Exemption No. 7372.

[FR Doc. 00–28739 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–65]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before November 29, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to §§ 11.85 and 11.91 of part 11 of 14 CFR.

Issued in Washington, D.C., on November 3, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 013SW.

Petitioner: Era Aviation, Inc.

Section of the 14 CFR Affected: 14 CFR 29.1(c).

Description of Relief Sought/Disposition: To permit three (3) Sikorsky Model S–61N helicopters (S–61N) to be certificated as Category B rotorcraft with a maximum gross weight greater than 20,000 pounds and 10 or more passenger seats.

Denied, 09/21/00, Exemption No. 7366.

Docket No.: 29462.

Petitioner: Dallas Airmotive, Inc.

Section of the 14 CFR Affected: 14 CFR 21.325(b)(3).

Description of Relief Sought/Disposition: To permit DAI to issue export airworthiness approvals for certain Class II products manufactured in the United Kingdom, Canada and Sweden but located in the United States.

Denial, 10/19/00, Exemption No. 7373.

[FR Doc. 00–28740 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–66]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before November 29, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to §§ 11.85 and 1191 of part 11 of 14 CFR.

Issued in Washington, DC, on November 3, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 30190.

Petitioner: Midwest Express Airlines, Inc.

Section of the 14 CFR Affected: 14 CFR 93.123.

Description of Relief Sought/ Disposition: To permit the allocation of exemption slot number 1497 at Ronald Reagan Washington National Airport (DCA) to Midwest Express to augment its service from DCA.

Grant, 10/19/00, Exemption No. 7370.

Docket No.: 30141.

Petitioner: Deniston Enterprises, Inc.

Section of the 14 CFR Affected: 14 CFR 135.299(a).

Description of Relief Sought/ Disposition: To permit Deniston pilots to accomplish a line operational evaluation (LOE) in a Level C or Level D flight simulator in lieu of a line check in an aircraft.

Denial, 10/03/00, Exemption No. 7362.

Docket No.: 28517.

Petitioner: Mr. Samuel D. James.

Section of the 14 CFR Affected: 14 CFR 91.109(a) and (b)(3).

Description of Relief Sought/ Disposition: To permit Mr. James to conduct certain flight instruction and simulated instrument flights to meet the recent experience requirements in Beechcraft airplanes equipped with a functioning throwover control wheel in place of functioning dual controls.

Grant, 10/03/00, Exemption No. 6532B.

Docket No.: 30159.

Petitioner: Wallace State Community College.

Section of the 14 CFR Affected: 14 CFR 135.251, 135.255, 135.353 and appendixes I and J to part 121.

Description of Relief Sought/ Disposition: To permit Wallace State to conduct local sightseeing flights at Folsom Field, Vinemont, Alabama, for the one-day Wings Over Cullman Airshow in October 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 10/06/00, Exemption No. 7365.

Docket No.: 23492.

Petitioner: United States Hang Gliding Association, Inc.

Section of the 14 CFR Affected: 14 CFR 103.1(a) and (b).

Description of Relief Sought/ Disposition: To permit individuals authorized by USHGA to operate unpowered ultralight vehicles (hang gliders) weighing less than 155 pounds, with another occupant, for the purpose of sport, training, or recreation.

Grant, 10/03/00, Exemption No. 4712G.

Docket No.: 28639.

Petitioner: Peninsula Airways, Inc. dba PenAir.

Section of the 14 CFR Affected: 14 CFR 121.574(a)(1) and (3).

Description of Relief Sought/ Disposition: To permit the carriage and operation of oxygen storage and dispensing equipment for medical use by patients requiring emergency or continuing medical attention while on board an aircraft operated by PenAir when the equipment is furnished and maintained by a hospital treating the patient.

Grant, 09/28/00, Exemption No. 6523B.

[FR Doc. 00–28741 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–67]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions of exemption Part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition document number involved and must be received on or before November 29, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the

Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to §§ 11.85 and 11.91 of part 11 of 14 CFR.

Issued in Washington, DC, on November 3, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 30186.

Petitioner: Reeve Aleutian Airways, Inc.

Section of the 14 CFR Affected: 14 CFR 121.314(c), 25.857(c)(2) and 25.857(c)(4).

Description of Relief Sought: To permit three Model L188C airplanes to operate without their Class C cargo compartments being fitted with built-in fire extinguishing or suppression systems controllable from the cockpit, and provide a means to control ventilation and drafts within the compartment so that the extinguishing agent used can control any fire that may start within the compartment.

[FR Doc. 00–28742 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application (01–03–C–00–GUC) to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Gunnison County Airport, Submitted by the County of Gunnison, Gunnison, Colorado

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 PFC revenue at Gunnison County Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before December 11, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Alan Wiechmann, Manager, Denver Airports District Office; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Rex A. Tippetts, Airport Manager, at the following address: 711 Rio Grande Avenue, Building B, Gunnison, Colorado 81230.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Gunnison County Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Schaffer, (303) 342–1258, 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361. 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 01–03–C–00–GUC to impose and use PFC revenue at Gunnison County Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 1, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by Gunnison County Airport, Gunnison, Colorado, 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 January 30, 2001.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge-effective date: April 1, 2001.

Proposed charge-expiration date: June 1, 2003.

Total requested for use approval: $480,667.

Brief description of proposed project: Land acquisition (Wilson property); Land acquisition (Bratton property); Perimeter fencing; Aircraft rescue and fire fighting vehicle; Design for D–IV safety area standards; Design and construction of I-Bar Road.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Gunnison County Airport.

Issued in Renton, Washington on November 1, 2000.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 00–28734 Filed 11–8–00; 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 a Passenger Facility Charge (PFC) at the Huntsville International Airport, Huntsville, AL

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 the Huntsville International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before December 11, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Jackson, MS Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Luther H. Roberts, Jr., AAE, Deputy Director of the Huntsville-Madison County Airport Authority at the following address: 1000 Glenn Hearn Boulevard, Box 20008, Huntsville, AL 35834.

Air carriers and foreign air carriers may summit copies of written comments previously provided to the

Huntsville-Madison County Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Roderick T. Nicholson, Program Manager, FAA Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307, (601) 664–9884. 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 the Huntsville International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 2, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Huntsville-Madison County Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 20, 2001.

The following is a brief overview of the application.

PFC Application No.: 01–11–C–00–HSV.

Level of the proposed PFC: $4.50.

Proposed charge effective date: April 1, 2001.

Proposed charge expiration date: February 1, 2017.

Total estimated net PFC revenue: $36,319,312.

Brief description of proposed project(s): Western Land Acquisition (3,500 acres).

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Any Air Taxi/Commercial Operator (ATCO), Certified Air Carriers (CAC) and Certified Route Air Carriers (CRAC) having fewer than 500 annual enplanements.

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 the Huntsville-Madison County Airport Authority.

Issued in Jackson, MS on November 2, 2000.

Wayne Atkinson,

Manager, Jackson, MS Airports District Office, Southern Region.

[FR Doc. 00–28733 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at Naples Municipal Airport, Naples, 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 a PFC at Naples Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before December 11, 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, Florida 32822.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Ted Soliday, Executive Director of the Naples Airport Authority at the following address: 160 Aviation Drive, Naples, FL 34104

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Naples Airport Authority under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Jennifer Ganley, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822, (407) 812–6331, ext. 25. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Naples Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 1, 2000, the FAA determined that the application to impose a PFC submitted by Naples Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 15, 2001.

The following is a brief overview of the application.

PFC Application No.: 01–03–I–00–APF

Level of the proposed PFC: $3.00.

Proposed charge effective date: 8/1/01.

Proposed charge expiration date: 12/1/06.

Total estimated net PFC revenue: $850,000.

Brief description of proposed project(s): Rehabilitate and extend parallel Taxiway B.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: non-scheduled air carriers and charter operators using aircraft with less than 10 seats.

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 the Naples Airport Authority.

Issued in Orlando, Florida on November 1, 2000.

W. Dean Stringer,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 00–28743 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (01–03–C–00–SLC) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Salt Lake City International Airport, Submitted by the Salt Lake City Department of Airports, Salt Lake City, Utah

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 PFC revenue at Salt Lake City International Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before December 11, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Alan E. Wiechmann,

Manager, Denver Airports District Office, DEN–ADO, Federal Aviation Administration; 26805 East 68th Avenue, Suite 224, Denver, Colorado 80249.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Timothy L. Campbell, Executive Director, at the following address: Salt Lake City Department of Airports, 776 N. Terminal Dr., TUI, Suite 250, Salt Lake City, Utah 84122.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Salt Lake City International Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher J. Schaffer, (303) 342–1258, 26805 East 68th Avenue, Suite 224, Denver, Colorado 80249. 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 (01–03–C–00–SLC), to impose and use PFC revenue at Salt Lake City International Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On October 30, 2000, the FAA determined that, the application to impose and use the revenue from a PFC, submitted by the Salt Lake City Department of Airports, Salt Lake City, Utah, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 30, 2001.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: June 1, 2001.

Proposed charge expiration date: March 31, 2002.

Total requested for use approval: $28,822,000.

Brief description of proposed project: Taxiway ''H'' reconstruction, Cargo apron bypass, South cargo apron expansion, Airfield emergency access road and snow storage, Improve airport access road, Taxiway ''S'' reconstruction, Cargo site development and security gate, East apron overlay and reconstruction (Phase I), Airfield bird habitat management (Phase I), Bird hazard remediation (Phase II), Bird hazard remediation (Phase III), Security access system, Security system expansion and upgrade, Perimeter security fencing upgrade (Phase I), Perimeter security fencing upgrade (Phase II), Electrical vault modifications, Airfield lighting control system and communication equipment relocation, Modify elevated runway guard light and install precision approach path indicator and runway end identifier lights, CAT III and ALSF–II on Runway 16L, East side deicing, Fire station 11 relocation, CCTV system modifications and upgrades, Automated exit lane at screening checkpoints, Runway guard lights upgrade, Constant current regulator and circuit modifications, Deicing drainage improvements, North cargo taxilane extension, Taxiway ''H'' reconstruction (Phase II), Runway 16L pavement end and Taxiway ''H'' reconstruction, acquisition of land, Tooele Valley Airport wildlife fencing, Site preparation for new apron paving, West apron paving and lighting (Phase I), West apron drainage, East apron drainage, West apron paving (Phase II).

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: All air taxi/commercial operators filing or required to file FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Salt Lake City International Airport.

Issued in Renton, Washington on October 30, 2000.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 00–28736 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Request to Amend an Approved Application (96–02–C–00–SLC) to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Salt Lake City International Airport, Submitted by the Salt Lake City Department of Airports, Salt Lake City, Utah

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on a Request to Amend an approved PFC application.

SUMMARY: The FAA proposes to rule and invites public comment on the request to amend the approved application to impose and use PFC revenue at the Salt Lake City International Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before December 11, 2000.

ADDRESSES: Comments on this request may be mailed or delivered in triplicate to the FAA at the following address: Mr. Alan E. Wiechmann, Manager; Denver Airports District Office, DEN–ADO, Federal Aviation Administration; 26805 East 68th Avenue, Suite 224, Denver, Colorado 80249.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Timothy L. Campbell, Executive Director, at the following address: Salt Lake City Corporation—Department of Airports, 776 N. Terminal Drive, TUI, Suite 250, P.O. Box 22084, Salt Lake City, UT 84122.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to the Salt Lake City Department of Airports, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher J. Schaffer, (303) 342–1258, 26805 East 68th Avenue, Suite 224, Denver, Colorado 80249. The request may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the request to amend the application (96–02–C–00–SLC) to impose and use PFC revenue at the Salt Lake City International Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On October 2, 2000, the FAA received the request to amend the application to impose and use the revenue from a PFC, submitted by the Salt Lake City Airport Authority, within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the amendment no later than January 30, 2001.

The following is a brief overview of the application.

Proposed increase in PFC level: From $3.00 to $4.50.

Proposed charge-effective date: April 1, 2001.

Total requested for use approval: $61,883,000.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: All air taxi/commercial operators filing or required to file FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the request to amend an approved application in person at Salt Lake City International Airport.

Issued in Renton, Washington on October 30, 2000.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 00–28737 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application 01–05–U–00–SEA To Use Only the Revenue From a Passenger Facility Charge (PFC) at Seattle-Tacoma International Airport, Submitted by the Port of Seattle, Seattle-Tacoma International Airport, Seattle, Washington

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 use only PFC revenue at Seattle Tacoma International Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before December 11, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Gina Marie Lindsey, Director of Aviation Division, at the following address: Seattle-Tacoma International Airport, Port of Seattle, P.O. Box 68727, Seattle, WA 98168.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Seattle-Tacoma International Airport, under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Lee-Pang, (425) 227–2654, Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Renton, Washington 98055–4056. 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 01–05–U–00–SEA to use only PFC revenue at Seattle-Tacoma International Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 1,2000, the FAA determined that the application to use only the revenue from a PFC submitted by Port of Seattle, Seattle-Tacoma International Airport, Seattle, Washington, 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 January 16, 2001.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 1, 2004.

Proposed charge expiration date: January 1, 20023.

Total requested for use approval: $44,965,000.

Brief description of proposed projects: Security System Upgrade; Airfield Pavement and Infrastructure Improvements.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Seattle-Tacoma International Airport.

Issued in Renton Washington on November 1, 2000.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 00–28735 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Hillsborough and Rockingham Counties, New Hampshire; Correction

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; correction.

SUMMARY: The Federal Highway Administration published a document in the **Federal Register** of October 27, 2000, concerning Notice of Intent concerning Environmental Impact Statement: Hillsborough and Rockingham Counties, New Hampshire. The document contained incorrect proposed location of the scoping meeting.

FOR FURTHER INFORMATION CONTACT: William F. O'Donnell, 603–228–3057, Extension 145.

Correction

In the **Federal Register** of October 27, 2000, in FR Doc. 00–27669, on page 64474, in the third column, correct the meeting time and location to read ''Because this project has been on hold for a substantial period of time, a second formal scoping meeting will be held at 4:00 p.m. on December 6, 2000, the 3rd floor Auditorium of the University of NH—Manchester Campus, 300 (rather than 3000) Commercial Street in Manchester, New Hampshire.''

Dated: November 2, 2000.

Walter C. Waidelich,

Assistant Division Administrator, Concord, New Hampshire.

[FR Doc. 00–28817 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance from certain requirements of its safety

regulations. The individual petition is described below including, the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Norfolk Southern Corporation

[Waiver Petition Docket Number FRA–2000–8045]

Norfolk Southern Corporation (NS) seeks to amend temporary waiver PB–98–1 by extending the expiration date to December 31, 2001.

Part 232.21(a) requires that ''An emergency brake application command from the front unit of the device shall activate the emergency air valve at the rear of the train within one second.'' According to NS, their front unit sends an emergency brake command in 1.675 seconds, of which a significant portion of this time is involved in coding the unique signal that provides a security barrier against an attempted malicious emergency command from an outside source, or an accidental transmission from another front unit that may have an erroneous rear number inputted. The NS system is designed to code a unique message between the individual devices. These messages are separate from the rear unit number and are coded and initialized only during a five minute window at the initial terminal setup and testing of the system. NS believes this function provides a higher level of security than the two-way systems currently used by other Class I railroads.

Part 232.21(f) requires ''the availability of the front-to-rear communications link shall be checked automatically at least every ten minutes.'' The system used by NS does not have front-to-rear communications checked automatically every ten minutes. NS claims their system communications failure warning is linked to the rear-to-front portion of the messaging. If five minutes elapse, since a good message was received by the front unit, a ''STANDBY'' message is displayed on the front unit. This message informs the engineer that communication is lost.

Part 232.23(d) permits NS to use these devices because ''Each two-way end-of-train device purchased by any person prior to promulgation of these regulations shall be deemed to meet the design and performance requirements contained in § 232.21.''

It is NS's desire to redesign all of their devices to comply with § 232.21. In order to facilitate a smooth transition from the existing NS mode to the mode that is currently being used by the rest of the Class I railroads, NS requested and on June 8, 1998, was granted a temporary waiver of § 232.21(a) and (f) for the procurement and operation of a dual mode device for three years. The dual mode device is a dual frequency, two-way system which will operate in both the NS and the current compliant mode. When these devices are operated in the complaint mode, they will comply with current regulations. However, when they are operated in the NS mode, they will be compatible with existing NS devices as described above.

NS would like to modify existing waiver PB–98–1 by extending the expiration date to December 31, 2001, at which time they believe the entire NS locomotive fleet will be compliant with the current design and operating standards.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2000–8045) and must be submitted to the Docket Management Facility, Room PL–401, (Plaza level) 400 Seventh Street, SW, Washington, D.C. 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at http://dms.dot.gov.

Issued in Washington, DC on November 3, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–28730 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket MARAD–2000–8246]

U.S. Ship Management, Inc.; Notice of Application To Replace the Container Vessel ''Newark Bay'' in Maritime Security Program Operating Agreement MA/MSP–31

By letter dated October 27, 2000, U.S. Ship Management, Inc. (USSMI) has advised that the container vessel *Newark Bay* has been sold to Maersk Line, Limited on October 23, 2000, and will be utilized by that company as an ammunition carrier under long-term charter with the Military Sealift Command. As a result of this sale, that vessel is no longer eligible to receive benefit payments under Maritime Security Program (MSP) Operating Agreement MA/MSP–31.

Pursuant to the terms of MSP Operating Agreement MA/MSP–31, failure to operate the vessel named therein for more than 180 days in any fiscal year may constitute a default. Accordingly, if USSMI fails to resume operations under MA/MSP–31 by April 24, 2001, USMMI can, at the discretion of the Maritime Administration (MARAD) (we, our, or us), be declared in default of the terms of MSP Operating Agreement MA/MSP–31. USSMI has requested our approval to replace the *Newark Bay* with the container vessel *Sealand Pride* in order to remedy that potential default, and continue receiving benefits under the contract.

The Newark Bay is a container vessel of approximately 4,600 TEU capacity built in 1985. The *Sealand Pride* is a former Sea-Land Service Atlantic Class container vessel also built in 1985, and converted to an SL–31 Class vessel of approximately 3,700 TEU capacity in 1994. The vessel was extensively modernized during its conversion.

Due to the policy considerations involved in USSMI's request, we have decided to exercise our discretionary options and seek comments concerning this proposed substitution of vessels from interested parties. A copy of USSMI's request will be available for inspection at the Department of Transportation (DOT) Dockets Facility and on the DOT Dockets website (address information follows).

Any person, firm or corporation having an interest in this proposal, and desiring to submit comments concerning this matter, may file comments as follows. You should mention the docket number that appears at the top of this notice. Written comments should be submitted to the

Docket Clerk, U.S. DOT Dockets, Room PL–401, Nassif Building, Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590.

Comments may also be submitted by electronic means via the internet at http://dms.dot.gov/submit/. You may call Docket Management at (202) 366–9324. You may visit the Docket Room to inspect and copy comments at the address above between 10 a.m. and 5 p.m. EST, Monday through Friday, except holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov. Comments must be received by close of business November 24, 2000.

This notice is published as a matter of discretion, and the fact of its publication should in no way be considered a favorable or unfavorable decision on the application, as filed, or as may be amended. We will consider all comments submitted in a timely fashion, and will take such action thereto as may be deemed appropriate.

Dated: November 6, 2000.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–28827 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Announcing the Third Quarterly Meeting of the Crash Injury Research and Engineering Network

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting announcement.

SUMMARY: This notice announces the Third Quarterly Meeting of members of the Crash Injury Research and Engineering Network. CIREN is a collaborative effort to conduct research on crashes and injuries at nine Level 1 Trauma Centers which are linked by a computer network. Researchers can review data and share expertise, which could lead to a better understanding of crash injury mechanisms and the design of safer vehicles.

DATE AND TIME: The meeting is scheduled from 9 a.m. to 5 p.m. on November 30, 2000.

ADDRESSES: The meeting will be held in Room 6200–04 of the U.S. Department of Transportation Building, which is located at 400 Seventh Street, SW, Washington, DC.

SUPPLEMENTARY INFORMATION: The CIREN System has been established and crash cases have been entered into the database by each Center. NHTSA has held three Annual Conferences (two in Detroit and one in conjunction with STAPP in San Diego) where CIREN research results were presented. Further information about the three previous CIREN conferences is available through the NHTSA website at: http://www-nrd.nhtsa.dot.gov/include/bio_and_trauma/ciren-final.htm. NHTSA held the first quarterly meeting on May 5, 2000, with a topic of lower extremity injuries in motor vehicle crashes and the second quarterly meeting on July 21, 2000, with a topic of side impact crashes. Information from the May 5 and July 21 meetings are also available through the NHTSA website.

NHTSA plans to continue holding quarterly meetings on a regular basis to disseminate CIREN information to interested parties. This is the third such meeting. The topic for this meeting is thoracic injuries in motor vehicle crashes. Subsequent meetings have tentatively been scheduled for March and June 2001. These quarterly meetings will be in lieu of an annual CIREN conference.

FOR FURTHER INFORMATION CONTACT: Mrs. Donna Stemski, Office of Human-Centered Research, 400 Seventh Street, SW., Room 6206, Washington, DC 20590, telephone: (202) 366–5662.

Issued on: November 2, 2000.

Raymond P. Owings,

Associate Administrator for Research and Development, National Highway Traffic Safety Administration.

[FR Doc. 00–28700 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–59–U

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2000–6947, Notice 2]

Subaru of America, Inc.; Grant of Application for Decision of Inconsequential Non-Compliance

This notice grants the application by Subaru of America, Inc. (Subaru) to be exempted from the notification and remedy requirements of 49 U.S.C. 30118 and 30120 with respect to a noncompliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 209, ''Seat Belt Assemblies.'' Subaru has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.'' Pursuant to 49 CFR Part 556, Subaru has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301, ''Motor Vehicle Safety.'' The basis of the grant is that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published March 9, 2000, and an opportunity afforded for comment (65 FR 12615). The closing date was April 10, 2000. No comments were received.

Description of Noncompliance

Replacement seat belt assemblies were packaged without instruction sheets required by FMVSS No. 209 S4.1(k) and (l). All of the seat belt assemblies involved meet all other requirements of FMVSS No. 209.

Approximately 522 sets of replacement seat belt assemblies manufactured and sold were involved.

Subaru Submitted the Following in Support of Its Application

In accordance with FMVSS No. 209, S4.1(k) replacement seat belt assemblies must be accompanied by installation instructions for installing the assembly in a motor vehicle. These instructions ''shall state whether the assembly is for universal installation or for installation only in specifically stated motor vehicles and shall include at least those items specified in SAE Recommended Practice J800c, Motor Vehicle Seat Belt Installation, November 1973.

Subaru understands SAE Recommended Practice J800c, it deals primarily with the threading of webbing and location and drilling of anchorage holes and is not relevant here since all affected Subaru vehicles have pre-existing anchorage holes. All of the affected replacement seat belt assemblies are supplied ready for use with fully threaded webbing.

Subaru believes that S4.1(k) is intended to prevent the mismatch of a seat belt assembly in the wrong model vehicle or the wrong seating position and prevent improper installation of a seat belt at the correct position.

In accordance with FMVSS No. 209, S4.1(l) requires instructions addressing the importance of warning seat belts ''snugly and properly located on the body'' and information about seat belt maintenance. Subaru believes that since the owner's manual already provides proper usage and maintenance information to the vehicle owner and operator, incorrect usage and maintenance by the vehicle owner is highly unlikely.

Subaru has corrected all the replacement seat belt assembly inventory for shipment to dealers and will provide additional instruction documents to dealers with inventory subject to the noncompliance.

Replacement seat belt assemblies sold at retail to customers has not resulted in owner complaints as a result of this inconsequential noncompliance.

Subaru believes that, based upon the information described above, this is an inconsequential noncompliance.

NHTSA has reviewed Subaru's application and, for the reasons

discussed below, has decided that the noncompliance of the Subaru seat belt assemblies is inconsequential to motor vehicle safety.

First, we note that seat belt assemblies were distributed through the Subaru parts system, without the required ''installation instructions.'' FMVSS No. 209, S4.1(k), requires that seat belt assemblies sold as replacement equipment have ''installation instructions'' to ensure that the correct seat belt is selected as a replacement part, and that the seat belt is installed correctly. Subaru assures us that its parts ordering system and the box labels are quite specific and adequate to ensure that the proper seat belt is provided as a replacement part. We also believe that Subaru is correct in stating that the parts are so specific that if a mechanic tried to install the wrong part, the seat belt would not fit properly. Thus, we conclude that adequate safeguards are being taken by Subaru to ensure that the correct replacement seat belts are provided.

There seems to be little need for the installation instructions with replacements for original equipment seat belts. The SAE J800c Recommended Practice incorporated in FMVSS No. 209 appears to have been written as a guide on how to install a seat belt where one does not exist. The Recommended Practice discusses such things as how to determine the correct location for anchorages, how to create adequate anchorages and how to properly attach webbing to the newly installed anchorages. These instructions do not apply to today's replacement market. Additionally, vehicle manufacturers provide service manuals on how seat belts should be replaced. NHTSA does not believe the ''how to'' instructions are necessary in this case.

Next, we note that the subject seat belt assemblies were distributed without the required ''usage and maintenance instructions'' specified in FMVSS No. 209, S4.1(l), which requires that seat belt assemblies sold as replacement equipment have owner instructions on how to wear the seat belt and how to properly thread the webbing on seat belts where the webbing is not permanently attached. NHTSA believes that the proper usage is adequately described in the vehicle owner's manual. NHTSA does not believe that instructions about the proper threading of webbing is applicable to modern original equipment automobile seat belt systems. This second instruction sheet is either duplicated in the owner's manual or not applicable.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance that it describes is inconsequential to safety. The determination is limited to the vehicles and equipment covered by the Part 573 report. All products manufactured on and after the date Subaru determined the existence of this noncompliance must fully comply with the requirements of FMVSS No. 209.

Accordingly, Subaru's application is granted, and the applicant is exempted from providing the notification of the noncompliance that is required by 49 U.S.C. 30118 and from remedying the noncompliance, as required by 49 U.S.C. 30120.

Authority: 49 U.S.C. 30118(b), 30120(h), delegations of authority at 49 CFR 150 and 501.8.

Issued on: November 6, 2000.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 00–28835 Filed 11–8–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Released Rates Decision No. MC–999]

Notice of Filing of an Application To Amend Released Rate Provisions (and Corresponding Limits of Liability) for Motor-Carrier Shipments of Household Goods, and Request for Public Comments

AGENCY: Surface Transportation Board.

SUMMARY: The Household Goods Carriers' Bureau Committee (Committee), on behalf of its member motor carriers, seeks authority to amend Released Rates Decision No. MC–999 by changing the terms under which the carriers would limit their liability for damage to, or loss of, household-goods shipments, and thus changing the resulting charges to shippers.

DATES: Comments are due December 11, 2000.

ADDRESSES: Send comments (an original and 10 copies) referring to Released Rates Decision No. MC–999, to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: James W. Greene, (202) 565–1578, or Lawrence C. Herzig, (202) 565–1576. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION:

1. Background

Under 49 U.S.C. 14706(a)(1), motor carriers of household goods ordinarily are liable for the actual loss or injury that they cause to the property they transport.[1] However, under 49 U.S.C. 14706(f), household-goods carriers may establish ''released rates,'' under which the carriers' liability is limited to a value established by written declaration of the shipper or by a written agreement between the carrier and shipper, if they obtain permission from the Board.[2]

2. Current Provisions

The released rates currently offered by most household-goods carriers are based upon authority granted by the Board's predecessor, the Interstate Commerce Commission (ICC), in *Released Rates of Motor Common Carriers of Household Goods,* 9 I.C.C.2d 523 (1993). Under the plan approved in 1993, the freight charges paid by a household-goods shipper depend upon the level of liability assumed by the carrier. A shipper pays the carrier's lowest rate, the ''base rate'' when it agrees, by indicating in writing on the bill of lading, that the carrier's liability will be 60 cents per pound per article for goods lost or damaged, but not more than the actual, depreciated value of the item. According to the Committee, the percentage of household-goods shippers choosing to move their goods under the 60-cents-per-pound limitation on liability remained relatively constant from 1985 through 1996, decreasing from 33.1 to 31.2 percent.[3]

A second option available to shippers allows them to protect more of the value of the shipment for a higher transportation charge. The shipper declares a lump sum value for the entire shipment, and pays the base rate plus a charge of 70 cents for each $100, or fraction, of the ''declared value'' of the shipment. Under this second option, there is a minimum valuation: if the shipper's declared value is less than $1.25 times the weight (in pounds) of the shipment, the minimum declared value of $1.25 per pound will apply instead. The recovery under this option for lost goods is the actual (depreciated) value of the (typically used) goods up to the declared value of the shipment.[4]

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[1] Carriers are not liable for loss or injury that they do not cause, such as losses due to acts of God.

[2] Motor carriers of freight other than household goods may establish released rates without having to obtain the Board's permission. 40 U.S.C. 14706(c)(1)(A).

[3] The 60-cent limitation predates the 1993 plan. *See Household Goods Carriers' Bureau* v. *ICC,* 584 F.2d 437, 439 (D.C. Cir. 1978).

[4] Of course, if the carrier lost an item that was new and unused, it would be liable for the

Many carriers today also offer a third option for an even higher charge: ''full value protection'' (FVP) within broad ranges of declared values in which the carrier is liable for the full replacement value of items, up to the declared value of the shipment.[5] The breadth of the ranges of declared values to which a single charge applies under this third option is greater than the $100 increments provided under the second option. The Committee states that, from 1985 through 1996, shippers' election of FVP increased from 38.8 to 55.4 percent of shipments.

Under any of these options, when goods are damaged rather than lost, the carrier has the option of paying the cost of repairs to restore the damaged goods to their prior condition.

3. The New Proposal

The Committee now proposes to offer only two options rather than three. It would retain the same first option of paying a base rate, for which the carrier's liability is limited to 60 cents per pound per article. The only other option would be an FVP option based upon a declared value for the shipment. It would differ from the currently available options in two ways. First, there would be no choice under which the carrier is liable for the actual, depreciated value of the goods lost or damaged. Rather, the carriers would be liable for full replacement value. Second, the minimum declared value for shipments would increase from $1.25 to $4.00 times the weight of the shipment (in pounds). The Committee established this figure after concluding that $4.00 per pound, rather than $1.25 per pound, more closely approximates the average value of recent household-goods shipments.

The proposed FVP option would use the broad ranges of declared values from the current FVP option that many carriers offer. At the lower end, the valuation charge would increase as the declared values increased in $5,000 increments. As the declared values go up, the increments to which a single valuation charge would apply also would expand, up to $25,000 worth of declared values. The proposed ranges of declared values and corresponding charges are:

Declared value	Charge
$0 to $5,000	$76
$5,001 to $10,000	113
$10,001 to $15,000	149
$15,001 to $20,000	182
$20,001 to $25,000	216
$25,001 to $30,000	258
$30,001 to $35,000	298
$35,001 to $40,000	338
$40,001 to $50,000	380
$50,001 to $60,000	440
$60,001 to $75,000	508
$75,001 to $100,000	624
$100,001 to $125,000	754
$125,001 to $150,000	825
$150,001 to $175,000	933
$175,001 to $200,000	1,041
$200,001 to $225,000	1,155
$225,001 to $250,000	1,280
Over $250,000	1,280[1]

[1] Plus $.50 for each $100, or fraction thereof, in excess of $250,000 declared value.

Within any of the proposed valuation ranges, lower charges would apply if the shipper elects a $250 or $500 deductible. If goods were lost, the carrier would be fully liable for the loss of the property, at its replacement value with no reduction for depreciation, up to the declared value of the shipment.[6]

If a shipper did not, in writing, either select the 60-cents-per-pound-per-article limit or declare a value for the shipment, the declared value would be deemed to be $4.00 times the weight of the shipment in pounds. Also, when goods are damaged, the carrier would retain the option of paying repairs to restore the damaged items to their condition when the carrier received them, up to the declared value of the shipment.

4. Comments Requested

We wish to ensure that any proposal we might approve represents an appropriate liability regime for individual homeowners who would be affected. Therefore, we seek comments, especially from individual shippers of household goods and organizations or government entities that represent their interests, concerning the Committee's new proposal and particularly the issues we outline below.[7] We also seek additional information from the Committee, as discussed below.

A. 60-cents-per-pound Limitation

The limit of 60 cents per pound per article may no longer be appropriate if the estimated current average value of $4.00 per pound of household-goods shipments is accurate. There may be some appeal to having low base rates with minimal carrier liability for shippers who want to insure their household goods through other means. However, the rates for separate insurance likely will be higher, with lower carrier liability, because insurers typically seek to recover from the carriers, to the extent of the carrier's liability. Thus, any savings to the shipper from continuing an unrealistically low 60-cents-per-pound-per-article limitation could be illusory. We request comments on whether and why we should allow a 60 cents-per-pound-per-article limit.

In addition, we have received informal complaints from household-goods shippers who, despite our clear rule on this matter, state that they did not knowingly request the 60-cents-per-pound limitation but were somehow deemed to have selected it. Therefore, we also request comments on ways to better ensure that shippers make informed, conscious decisions regarding the level of carrier liability and understand any applicable limitations to liability.

B. Use of Deductibles

Under the proposal, if a shipper chooses a rate that includes a deductible, a carrier might lack a liability-based incentive to exercise reasonable care to avoid minor damages to shipments. We request comment on this aspect of the proposal.

C. Elimination of Actual (Depreciated) Value Option

We are concerned that the FVP proposal eliminates the current option under which motor carriers are liable for the actual (depreciated) value of the household goods in a shipment—the level of liability contemplated by the statute. We ask for comment on whether carriers should be allowed to eliminate this intermediate option.

D. Rate Levels

According to the Committee, today some 22.9 percent of FVP shipments result in paid claims. The Committee projects that 25 percent of FVP shipments under the proposed $4.00-per-pound minimum would result in

replacement value of the item. In that case, the ''actual value'' of the lost item would be its new, or replacement, value.

[5] We note that the protection under the third option could amount to less than full value if a shipper chose a declared value that is less than the replacement cost for all of the items in its shipment and the entire shipment were lost.

[6] Again, we note that a shipper that chooses a declared value that is lower than the replacement value of its household goods would not be able to replace all of its goods with new goods if the entire shipment were destroyed or lost.

[7] The Committee's proposal is the result of collective action by its members pursuant to 49 U.S.C. 13703. The Committee's request for renewed Board approval of (and resulting antitrust immunity for) discussing and taking actions collectively is currently pending before the Board. Our action in moving this proceeding forward is not intended to prejudge our disposition of the Committee's renewal request.

paid claims.[8] We do not know if this projection is based on a trend of an increasing number of paid claims. If the expected increase in paid claims did not occur, the additional revenues generated would have the same effect as a rate increase. We ask the Committee to submit all supporting data, including work papers, associated with the proposed fees and the prediction that a higher percentage of FVP shipments will result in paid claims.[9]

E. Different Carrier Liability on Identical Shipments

We do not know if the Committee intends a difference in carrier liability for two otherwise identical shipments, one of which has a declared lump sum value and one of which does not. As worded, the proposal would seem to provide a different result. Under the Committee's proposed terms:

> All shipments (other than those released to a value not exceeding 60¢ per pound per article) will be deemed released to a minimum lump sum value of $5,000 or $4.00 times the actual total weight (in pounds) of the shipment. If the shipper declares or releases the shipment to a valuation that falls between the valuation amounts shown, the next higher valuation amount and the applicable charge associated therewith will apply.

An example will illustrate our concern. There would be a different maximum amount of carrier liability on two identical shipments each weighing 4,000 pounds, with the same charge, depending on whether the shipper wrote in a declared value or left the line for a declared value blank. If the shipper wrote in the figure $16,000 on the blank for a declared value and the entire shipment were lost, the carrier could be liable for up to $20,000 (if the shipper demonstrated that the replacement value of his lost goods were that high) because the chosen figure, $16,000, ''falls between the valuation amounts shown'' on the carriers' proposed table of charges. But if the shipper does not write anything in the blank for declared value, the declared value of this shipment would be deemed to be $16,000 ($4.00 × 4,000) and the shipper would pay the same valuation charge; however, the carrier's maximum liability would be $16,000 if the entire shipment were lost. We ask whether the Committee intended this disparate result and if so, whether that is appropriate.

F. Annual Adjustments

The Committee requests authority to affect annual adjustments in both the proposed minimum valuation per pound and the proposed valuation charges for shipments, based on changes in the ''household furnishings and operations'' item within the Consumer Price Index, U.S. City Average, published by the Bureau of Labor Statistics (BLS) of the United States Department of Labor. We understand that BLS has restructured the household furnishings and operations index, and that certain items frequently included in household goods shipments (televisions and sound equipment, for example) were moved to other indexes. We request additional justification from the Committee regarding the relevance of the proposed index, comparing the items included in the index with all the items commonly included in shipments of household goods.

We invite comments regarding the merits of this or any other index that may be appropriate to establish adjustments in the minimum valuation of shipments and the corresponding charges. Additionally, we invite comments as to whether any methodology for adjusting minimum valuations of household-goods shipments should apply also to the carriers' charges, as the relationship between the costs of providing a specific dollar amount of carrier liability and changes in the value of household goods has not been explained.

5. Summary

We encourage interested persons to participate in this proceeding by submitting written data, views, or arguments for or against the proposed changes in the released rates authority for motor carriers of household goods. While we are interested particularly in receiving comments on certain issues, as discussed above, we invite comments on all aspects of the proposal. All comments and other materials referred to in this notice will be available for inspection and copying at the Board's address given above. Normal office hours are between 8:30 a.m. and 5:00 p.m., Monday through Friday, except holidays.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–28826 Filed 11–8–00; 8:45 am]

BILLING CODE 4915–00–P

[8] The Committee asserts that fewer claims were filed in the past because the $1.25-per-pound minimum had the effect of discouraging claims for small losses. But current FVP shipments have not been subject to the $1.25-per-pound minimum. Therefore, we question the Committee's assumption that there would be an increase in the amount of paid claims under the proposed new FVP option.

[9] Concerning the supporting data, we seek an explanation of the basis for arriving at the proposed charges for each of the 19 levels shown in Table 5 of the application. It would be helpful to have information similar to that submitted by the Committee in Attachment No. 3 to its October 1992 application to amend earlier released rate orders (Nos. MC–505 and MC–672).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 1, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 11, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1691.

Regulation Project Number: REG–120882–97 Final.

Type of Review: Extension.

Title: Continuity of Interest.

Description: Taxpayers who entered into a binding agreement on or after January 28, 1998 (the effective date of § 1.368–1T), and before the effective date of the final regulations under § 1.368–1(e) may request a private letter ruling permitting them to apply § 1.368–1(e) to their transaction. A private letter ruling will not be issued unless the taxpayer establishes to the satisfaction of the IRS that there is not a significant risk of different parties to the transaction taking inconsistent positions, for U.S. tax purposes with respect to the applicability of § 1.368–1(e) to the transaction.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 10.

Estimated Burden Hours Per Respondent: 150 hours.

Frequency of Response: Other (once).

Estimated Total Reporting Burden: 1,500 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 00–28824 Filed 11–8–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination—The Connecticut Indemnity Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 6 to the Treasury Department Circ. 570; 2000 Revision, published June 30, 2000, at 65 FR 40868.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Company, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 65 FR 40877, June 30, 2000.

With respect to any bonds currently in force with above listed Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, bonds that are continuous in nature should be replaced.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00536–5.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: November 1, 2000.

Judith R. Tillman,

Assistant Commissioner, Financial Operations, Financial Management Service.

[FR Doc. 00–28804 Filed 11–8–00; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination—Security Insurance Company of Hartford

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 7 to the Treasury Department Circ. 570; 2000 Revision, published June 30, 2000, at 65 FR 40868.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certification of Authority issued by the Treasury to the above named Company, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 65 FR 40898, June 30, 2000.

With respect to any bonds currently in force with above listed Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, bonds that are continuous in nature should be replaced.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00536–5.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: November 1, 2000.

Judith R. Tillman,

Assistant Commissioner, Financial Operations, Financial Management Service.

[FR Doc. 00–28803 Filed 11–8–00; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF VETERANS AFFAIRS

Scientific Review and Evaluation Board for Health Services Research and Development Service, Notice of Meeting

The Department of Veterans Affairs, Veterans Health Administration, gives notice under Public Law 92–463, that a meeting of the Nursing Research Initiative Subcommittee of the Scientific Review and Evaluation Board for Health Services Research and Development Service will be held at the Washington Plaza Hotel, 10 Thomas Circle, NW, Washington, DC 20005, on March 6, 2001. On March 6, 2001, the meeting will convene from 8 a.m. until 5 p.m. The purpose of the meeting is to review research and development applications concerned with the measurement and evaluation of health care services and with testing new methods of health care delivery and management. Applications are reviewed for scientific and technical merit. Recommendations regarding funding are prepared for the Chief Research and Development Officer.

This meeting will be open to the public at the start of the March 6 session for approximately one-half hour to cover administrative matters and to discuss the general status of the program. The closed portion of the meeting involves discussion, examination, reference to, and oral review of staff and consultant critiques of research protocols and similar documents. During this portion of the meeting, discussion and recommendations will include qualifications of the personnel conducting the studies (the disclosure of which would constitute a clearly unwarranted invasion of personal privacy), as well as research information (the premature disclosure of which would be likely to frustrate significantly implementation of proposed agency action regarding such research projects). As provided by the subsection 10(d) of Pub. L. 92–463, as amended by Public Law 94–409, closing portions of these meetings is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

Those who plan to attend the open session should contact the Health Services Research and Development Assistant Director, Scientific Review (124F), Health Services Research and Development Service, Department of Veterans Affairs, 1400 I Street, NW, Suite 780, Washington, D.C., at least five days before the meeting. For further information, call (202) 408–3665.

Dated: November 1, 2000.

By Direction of the Acting Secretary

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 00–28703 Filed 11–8–00; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 65, No. 218

Thursday, November 9, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 179

[Docket No. 99F–2673]

Irradiation in the Production, Processing and Handling of Food

Correction

In rule document 00–27735 beginning on page 64605 in the issue of Monday, October 30, 2000, the docket number is corrected to read as set forth above.

[FR Doc. C0–27735 Filed 11–8–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 600 and 606

[Docket No. 97N–0242]

Biological Products: Reporting of Biological Product Deviations in Manufacturing

Correction

In rule document 00–28133 beginning on page 66621 in the issue of Tuesday, November 7, 2000, make the following correction:

On page 66622, in the first column, in the **DATES** section, ''May 7, 2000'' should read ''May 7, 2001''.

[FR Doc. C0–28133 Filed 11–8–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43291; File No. SR–NASD–00–34]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Authority of the Director of Arbitration to Remove Arbitrators for Cause

September 14, 2000.

Correction

In notice document 00–24389 beginning on page 57413 in the issue of Friday, September 22, 2000 make the following correction:

On page 57416, in the second column, under the heading ''**IV. Solicitation of Comments**'', in the 25th line ''NASA'' should read ''NASD''.

[FR Doc. C0–24389 Filed 11–8–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43303; File No. SR–NASD–00–52]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to an Alternative Method of Reporting Riskless Principal Trades

September 19, 2000.

Correction

In notice document 00–24642 beginning on page 57853 in the issue of Tuesday, September 26, 2000, the date is added to read as set forth above.

[FR Doc. C0–24642 Filed 11–8–00; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
November 9, 2000

Part II

Department of Agriculture

Forest Service

Protecting People and Sustaining Resources in Fire-Adapted Ecosystems—A Cohesive Strategy; Notice

DEPARTMENT OF AGRICULTURE

Forest Service

Protecting People and Sustaining Resources in Fire-Adapted Ecosystems—A Cohesive Strategy

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The Forest Service is adopting a cohesive strategy for fire management and forest health programs. The full text of the report, *Protecting People and Sustaining Resources in Fire-Adapted Ecosystems—A Cohesive Strategy*, is set out at the end of this notice. This report responds to direction from Congress and the President to provide a strategic plan to reduce wildland fire risk, protect communities, and restore and maintain forest ecosystem health in the interior West. The report also responds to findings and recommendations in a recent General Acounting Office report, and it provides a strategic framework for reducing hazardous fuels buildup as addressed in the September 8 report to the President by the Secretaries of Agriculture and the Interior, *Managing the Impacts of Wildfires on Communities and the Environment.*

ADDRESSES: Copies of the cohesive strategy report and related materials are available electronically from the Forest Service World Wide Web/Internet home page at *http://www.fs.fed.us/.* Paper copies of the report also may be obtained by writing to Director, Fire and Aviation Management Staff, 2nd Floor-SW, Sidney R. Yates Federal Building (Mail Stop 1107), Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090.

FOR FURTHER INFORMATION CONTACT: Mark Beighley, Fire and Aviation Management Staff, (202) 205–0888.

SUPPLEMENTARY INFORMATION: During the 2000 fire season more than 6.8 million acres of public and private lands had burned as of early October—more than twice the 10-year national average. The magnitude of these fires is the result of two primary factors: a severe drought, accompanied by a series of storms that produced thousands of lightning strikes followed by windy conditions; and the long-term effects of almost a century of suppressing all wildfires that has led to a buildup of brush and small trees in the nation's forests and rangelands.

On August 8, 2000, the President directed the Secretaries of Agriculture and the Interior to prepare a report recommending how best to respond to this year's severe fires, reduce the impacts of those fires on rural communities, and ensure sufficient firefighting resources in the future. On September 8, 2000, the President accepted their report, *Managing Impacts of Wildfires on Communities and the Environment*, which provides an overall framework for forest health and fire management.

Subsequently, the Forest Service issued the report entitled, *Protecting People and Sustaining Resources in Fire-Adapted Ecosystems—A Cohesive Strategy*, which is set out in its entirety, with the exception of certain illustrations which could not be printed in the **Federal Register**, in this notice. This report provides the strategic framework for reducing hazardous fuels buildup within wildland—urban interface communities, readily accessible municipal watersheds, threatened and endangered species habitat, and other impotant local features. The Chief of the Forest Service signed the cohesive strategy report on October 13, and it was released to agency managers on October 17.

The report responds to Congressional direction to provide a strategic plan to reduce wildland fire risk and restore forest ecosystem health in the interior West. The report is set out at the end of this notice as directed by Title IV of the fiscal year 2001 appropriations act for Interior and related agencies (Public Law 106–291). As further directed by the act, the agency also has reviewed other policies and rulemakings currently in development for consistency with the cohesive strategy, including proposed rules and policies for the National Forest System road management and transportation system (65 FR 11675, March 3, 2000) and roadless area conservation (65 FR 30276, May 10, 2000); and the Interior Columbia Basin Supplemental Draft Environmental Impact Statement and the Sierra Nevada Framework/Sierra Nevada Forest Plan Draft Environmental Impact Statement. This report also responds to the General Acounting Office report, *Western National Forests: A Cohesive Stratgey Is Needed To Address Catastrophic Wildfire Threats* (GAO/RCED–99–65).

This cohesive strategy addresses the restoration and maintenance of ecosystem health in fire-adapted ecosystems for priority areas, with emphasis on the interior West. The focus of the strategy is on protecting communities at risk and restoring ecosytems that evolved with frequently occurring, low-intensity fire. Many of these forests and rangelands have grown out of balance due in part to past management practices and decades of fire suppression. The strategy identifies restoration priorities in fire dependent ecosystems for urban-wildland interface areas, threatened and endangered species habitat, and readily accessible municipal watersheds.

Dated: November 1, 2000.

Mike Dombeck,

Chief.

Protecting People and Sustaining Resources in Fire-Adapted Ecosystems—A Cohesive Strategy

The Forest Service Management Response to the General Accounting Office Report, GAO/RCED–99–65,

October 13, 2000.

Submitted by: Lyle Laverty, Report Team Leader, Rocky Mountain Region Regional Forester; and Jerry Williams, Report Team Co-Leader, Northern Region Director Fire Management

Approved by: Mike Dombeck, Chief of the Forest Service

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Resilience and the Effects of Restoration Treatments in Fire-Prone Forests

Note: The photograph mentioned below is not printed in the **Federal Register**. It is available as indicated in the **ADDRESSES** section at the beginning of this notice.

This photograph illustrates how a treated forest—the green strip running toward the crest of the ridge in the photo's center—can survive a severe wildland fire. It also shows the differences in resilience between treated and untreated forests. The untreated forest—the blackened areas located on either side of this green strip—burned in the Wenatchee National Forest's 1994 Tyee Fire.

In this example, treatment was in the form of a ''shaded fuel break'' (area of green trees in above photo) established several years before. The purpose of these shaded fuel breaks—located in tactically important areas—is to provide firefighters an anchor from which to safely fight fire. The shaded fuel break (pictured) left older-age trees overhead and thinned out the smaller trees beneath them—removing surface fuels to reduce potential fire intensities.

On the Tyee Fire, extreme conditions that included high winds and rapid fire growth, precluded safe attack. No suppression actions were therefore taken in this area. Nevertheless, because the fuels had been reduced and fire intensities did not burn hot enough to kill all of the older trees, much of the treated forest survived the fire—even without the efforts of firefighters.

The cohesive strategy described in this report attempts to achieve improved forest and grassland resilience—as illustrated in this Tyee Fire photo. The strategy provides an approach to reduce fuel loadings in fire-prone forests to protect people and sustain resources.

Executive Summary

Premise

This strategy is based on the premise that sustainable resources are predicated on healthy, resilient ecosystems. In fire-adapted ecosystems, some measure of fire use—at appropriate intensity, frequency, and time of year—should be included in management strategies intended to protect and sustain watersheds, species, and other natural resources over the long term.

The strategy is also based on the premise that, within fire-adapted ecosystems, fire-maintained forests and grasslands are inherently safer for firefighters and the public than ecosystems in which fire is excluded.

Purpose

The strategy establishes a framework that restores and maintains ecosystem health in fire-adapted ecosystems for priority areas across the interior West. In accomplishing this, it is intended to:

- Improve the resilience and sustainability of forests and grasslands at risk,
- Conserve priority watersheds, species and biodiversity,
- Reduce wildland fire costs, losses, and damages, and
- Better ensure public and firefighter safety.

Priorities

Wildland-urban interface. Wildland-urban interface areas include those areas where flammable wildland fuels are adjacent to homes and communities.

Readily accessible municipal watersheds. Water is the most critical resource in many western states. Watersheds impacted by uncharacteristic wildfire effects are less resilient to disturbance and unable to recover as quickly as those that remain within the range of ecological conditions characteristic of the fire regime under which they developed.

Threatened and endangered species habitat. The extent of recent fires demonstrates that in fire-adapted ecosystems few areas are isolated from wildfire. Dwindling habitat for many threatened and endangered species will eventually be impacted by wildland fire. The severity and extent of fire could eventually push declining populations beyond recovery.

Maintenance of existing low risk Condition Class 1 areas. This is especially important in the southern and eastern states where high rates of vegetation growth can eliminate the effects of treatment in 5–10 years. Recent droughts have caused severe wildland fire problems in Florida and Texas.

Elements

For the purposes of this report, the following are used as the elements of a cohesive strategy:

- Institutional Objectives and Priorities
- Program Management Budgets and Authorities
- Social Awareness and Support

The strategy is based on the alignment of these institutional, program management, and constituency elements. The cohesion of this strategy stands on the collective strength of these three core elements.

Within the Forest Service, ecosystem management concepts continue to evolve into practice. This report describes a cohesive set of actions from which the Forest Service may choose to initiate restoration and maintenance objectives within fire-adapted ecosystems.

I. Purpose and Intent of a Cohesive Strategy

''The most extensive and serious problem related to the health of national forests in the interior West is the over-accumulation of vegetation.''—General Accounting Office Report (99–65)

Preface

The 2000 fire season was undoubtedly one of the most challenging on record. As of early October, more than 6.8 million acres of public and private lands burned—more than twice the 10-year national average. The magnitude of these fires is the result of two primary factors: A severe drought, accompanied by a series of storms that produced thousands of lightning strikes followed by windy conditions; and the long-term effects of almost a century of aggressively suppressing all wildfires that has led to an unnatural buildup of brush and small trees in our forests and rangelands.

On August 8, 2000, President Clinton asked Secretaries Babbitt and Glickman to prepare a report that recommends how best to respond to this year's severe fires, reduce the impacts of those fires on rural communities, and ensure sufficient firefighting resources in the future. On September 8, 2000, President Clinton accepted their report *Managing Impacts of Wildfires on Communities and the Environment.*

Operating principles directed by The Chief of the Forest Service in implementing this report include:

Firefighting Readiness. Increase firefighting capability and capacity for initial attack, extended attack, and large

fire support that will reduce the number of small fires becoming large, to better protect natural resources, to reduce the threat to adjacent communities, and reduce the cost of large fire suppression.

Prevention Through Education. Assist state and local partners to take actions to reduce fire risk to homes and private property through programs such as FIREWISE.

Rehabilitation. Focus rehabilitation efforts on restoring watershed function, including the protection of basic soil, water resources, biological communities, and prevention of invasive species.

Hazardous Fuel Reduction. Assign highest priority for hazardous fuels reduction to communities at risk, readily accessible municipal watersheds, threatened and endangered species habitat, and other important local features, where conditions favor uncharacteristically intense fires.

Restoration. Restore healthy, diverse, and resilient ecological systems to minimize uncharacteristically intense fires on a priority watershed basis. Methods will include removal of excessive vegetation and dead fuels through thinning, prescribed fire, and other treatment methods.

Collaborative Stewardship. Focus on achieving the desired future condition on the land in collaboration with communities, interest groups, and state and federal agencies. Streamline process, maximize effectiveness, use an ecologically conservative approach, and minimize controversy in accomplishing restoration projects.

Monitoring. Monitor to evaluate the effectiveness of various treatments to reduce unnaturally intense fires while restoring forest ecosystem health and watershed function.

Jobs. Encourage new stewardship industries and collaborate with local people, volunteers, Youth Conservation Corps members, service organizations, and Forest Service work crews, as appropriate.

Applied Research and Technology Transfer. Focus research on the long-term effectiveness of different restoration and rehabilitation methods to determine those methods most effective in protecting and restoring watershed function and forest health. Seek new uses and markets for byproducts of restoration.

Managing Impacts of Wildfires on Communities and the Environment provides an overall framework for implementing fire management and forest health programs. This report provides the strategic framework for reducing hazardous fuels buildup within wildland-urban interface communities, readily accessible municipal watersheds, threatened and endangered species habitat, and other important local features. The objective of this strategy is to describe actions that could restore healthy, diverse, and resilient ecological systems to minimize the potential for uncharacteristically intense fires on a priority basis. Methods will include removal of excessive vegetation and dead fuels through thinning, prescribed fire, and other treatment methods.

This report is based on Forest Service experience and analysis. It also responds to Congressional direction to provide a strategic plan to reduce wildland fire risk and restore forest ecosystem health in the interior West. It reflects the findings of the U.S. General Accounting Office (GAO) Report, *Western National Forests: A Cohesive Strategy is Needed to Address Catastrophic Wildland fire Threats* (GAO/RCED–99–65).

The General Accounting Office report concludes, ''The most extensive and serious problem related to the health of national forests in the interior West is the over-accumulation of vegetation.'' The General Accounting Office estimated that the over-accumulation of fuels problem affects approximately 39 million acres in the interior West.

The Chief of the Forest Service chartered the strategy outlined in this report. The National Association of State Foresters and the U.S. Department of the Interior participated with the Forest Service in developing this report.

It is important to note that this is an iterative strategy. It will be refined by: further programmatic and manual direction; ongoing roadless, roads, and planning rulemakings; and environmental impact statements and decision documents for the national grasslands and ongoing regional initiatives.

At the national level the strategy articulates:

- Agency-wide objectives and milestones.
- Geographic priorities, broad management guidance, and performance measures for accountability.
- Alternative schedules to accomplish restoration and maintenance objectives over various timeframes.

Separate action plans, consistent with the strategy and regional assessments and direction, and ongoing national rulemakings, will outline implementation steps at the organization's regional, forest, and ranger district levels.

The acreage and cost estimate numbers used in this report are preliminary and derived from coarse-scale assessments. Further refinement and analysis will initiate appropriate adjustment in the strategy and will occur as more site-specific assessments are completed.

Focus

The focus of this strategy is on restoring ecosystems that evolved with frequently occurring, low intensity fires. These fires typically occurred at intervals of between 1 to 35 years and served to reduce growth of brush and other understory vegetation while generally leaving larger, older trees intact.

Fire suppression activities and some past management practices over the past 100 years have excluded fire from many of these fire-adapted ecosystems. In the absence of fire, many of these lands have become subject to an over-accumulation of shrubs and small trees, diminishing ecosystem diversity, health, and resiliency and fueling conditions for unnaturally intense fires that threaten communities, air, soil, water quality, and plant and animal species.

Premise

This strategy outlines approaches to protect communities and restore and maintain land health in fire-adapted ecosystems across the interior West. The report is based on the premise that sustainable resources depend on healthy, properly functioning, resilient ecosystems.

Within fire-adapted ecosystems, fire-maintained forests and grasslands are inherently safer for firefighters and the public than ecosystems in which fire is excluded.

In fire-adapted ecosystems, some measure of fire use—at the appropriate intensity, frequency, and time of year—should be an essential component of management strategies intended to protect and sustain watersheds, species, and other natural resources over the long term.

Purpose

The strategy outlines approaches to restore and maintain land health in fire-adapted ecosystems across the interior West. In accomplishing this, it is intended to:

- Improve the resilience and sustainability of forests and grasslands at risk,
- Conserve priority watersheds, species and biodiversity,
- Reduce wildland fire costs, losses, and damages, and
- Better ensure public and firefighter safety.

Priorities

• Wildland-urban interface. Wildland-urban interface areas include those areas where flammable wildland fuels are adjacent to homes and communities.

• Readily accessible municipal watersheds. Water is the most critical resource in many western states. Watersheds impacted by uncharacteristic wildfire effects are less resilient to disturbance and unable to recover as quickly as those that remain within the range of ecological conditions characteristic of the fire regime under which they developed.

• Threatened and endangered species habitat. The extent of recent fires demonstrates that in fire-adapted ecosystems few areas are isolated from wildfire. Dwindling habitat for many threatened and endangered species will eventually be impacted by wildland fire. The severity and extent of fire could eventually push declining populations beyond recovery.

• Maintenance of existing low risk Condition Class 1 areas. This is especially important in the southern and eastern states where high rates of vegetation growth can eliminate the effects of treatment in 5–10 years. Recent droughts have caused severe wildland fire problems in Florida and Texas.

Present Situation

Most forests and grasslands in the interior West and their associated species are fire-adapted. Some, known as ''short interval'' fire-adapted ecosystems, evolved from frequent, low-intensity fires that burned surface fuels. These fires recycled nutrients, checked encroachment of competing vegetation, and maintained healthy conditions (see below in top picture).

Generally, the prolonged absence of low-intensity burning in these ecosystems creates a surface fuel buildup and an over-accumulation of small trees and brush that makes forests more susceptible to insect infestations, disease outbreaks, and severe wildland fires.

Before the turn of the last century, livestock grazing, selective logging, and curtailment of burning by Native Americans began to alter the composition, structure, and function of these fire-adapted forest ecosystems. As a result of human influences, fire-intolerant species replaced fire-tolerant species. Forest stands that typically grew 50 larger fire-tolerant trees per acre became encroached with more than 600 mostly small, fire-intolerant trees per acre. Without recurring underburns, seedlings filled in beneath the older trees—transforming open park-like forests into dense forests.

Expanded human development, changes in climate, and fire suppression have contributed to substantial accumulations of understory vegetation. This over-accumulated vegetation predisposes some areas to severe wildland fires, potentially leaving watersheds, species, and people at risk.

Today, primarily as a result of prolonged fire exclusion, many of the most serious wildland fire threats and forest ecosystem health issues are concentrated within fire-adapted ecosystems that evolved with frequent, low-intensity fires.

The Strategy

This report outlines a strategy to reduce wildland fire threats and restore forest ecosystem health in the interior West. The strategy builds on the premise that within fire-adapted ecosystems, reducing fuel levels and using fire at appropriate intensities, frequencies, and time of year are key to: Restoring healthy, resilient conditions; sustaining natural resources; and protecting people.

The strategy introduces institutional objectives, establishes program management priorities and cost estimates, and confirms the importance of expanding constituency support. The strategy's success stands on the cohesion and collective strength of these elements.

The strategy places a high priority on treating areas where human communities, watersheds, or species are at risk from severe wildfire. It relies on a variety of treatment options to achieve restoration objectives in wildland-urban interface areas, readily accessible municipal watersheds, and habitats of threatened and endangered species. Immediate treatment efforts would be concentrated in the shorter interval fire-adapted ecosystems. These priority ecosystems are farthest outside the historic range of variability and are in close proximity to human communities.

Strategy—Ties to Ongoing Planning and Rulemaking Efforts

First, the strategy meets the requirements of the Forest Service Government Performance and Results Act (GPRA) Strategic Plan (2000 revision) by establishing objectives, milestones, and performance elements for ecosystem restoration and maintenance, and conservation education.

Second, few wildland-urban interface areas are adjacent to inventoried roadless areas making roadless areas a lower priority for treatment. More over, all of the alternatives currently under consideration in the roadless initiative allow for the construction of roads to suppress fire where public health and safety are at risk.

Third, the ongoing roads policy will ensure that operational decisions relative to implementation—such as which roads should be left open or maintained to enhance firefighting or other fire management activities—are made locally through cooperative planning.

Finally, efforts to revise management plans governing the national forests and grasslands and the Columbia River Basin and Sierra Nevada ecosystems will integrate fire management with other agency multiple-use objectives. This strategy will be refined and adapted to ensure consistency with the outcomes of these regional conservation efforts.

Strategy—How Much Treatment Is Needed?

The strategy does not require that every high, medium or low risk acre be treated, nor does it eliminate all risks. By strategically identifying fuel treatment areas to protect values associated with human communities, municipal watersheds and critical species habitat, the damaging effects of wildland fire can be effectively minimized.

Due to other agency priorities and funding constraints, historic efforts to reduce fire risk often focused treatment efforts on areas that posed the least risk to communities. The result: areas where treatments could be implemented at the least cost often took priority over other areas with higher costs.

The purpose of this report is to establish priorities for treatment. The strategy will be refined as hazardous fuels reduction and restoration priorities are considered in local, regional and national planning efforts.

Strategy—Focus on High-Risk Areas

The strategy focuses treatment on high-risk areas, rather than least-cost acres. Existing roads will be used to access high-risk areas. Where roads are scheduled for closure, consideration will be given to accomplishing ecosystem restoration objectives prior to closure.

While emphasizing *restoration* in the interior West, the strategy also supports ongoing efforts to *maintain* healthy ecosystems where they currently exist. For example, in the South, fuels can rapidly accumulate to dangerous levels in the absence of treatment. The Forest

Service must therefore continue treating these areas.

Fuel reduction treatment techniques will range from maintenance prescribed burning, where fire is used to maintain forest conditions in lower-risk acres, to restoration treatments in higher-risk areas where mechanical thinning is followed by prescribed burning. Forest planning and collaboration with states, local governments, tribes and the public will determine the number of acres to be treated and where and how the treatment will occur.

The first priority for restoration will be the millions of acres of already roaded and managed landscapes that are in close proximity to communities. Extensive use of service contracts will provide local jobs and accomplish land management objectives while helping to protect people and property.

In order to maximize effectiveness and minimize controversy, mechanical treatments will be prioritized toward wildland-urban interface areas within already roaded and managed portions of the landscape. Under this strategy, ecologically sensitive areas, such as old growth and late successional forests, will be avoided. In some areas, where old growth characteristics are threatened by the risk of uncharacteristic wildfire effects, the agency may conduct fuel treatments designed to protect older, larger trees while reducing unnatural buildups of understory vegetation.

Better integration of existing program budgets could reduce the amount of money requested. In most cases, any receipts associated with treatments will not be significant due to the need to reduce the disproportionately large number of small, non-merchantable trees, brush, and shrubs that dominate short interval fire-adapted ecosystems and leave standing the larger, fire-tolerant trees.

Strategy—Complements Other Efforts

The strategy complements other work, including efforts to protect roadless areas and to better manage the existing road system. For example, in most places roadless areas are often less affected by past management practices and found at higher elevations with vegetation that evolved with longer fire return intervals. Furthermore, roadless areas are typically removed from human communities. Thus, fires in these areas may pose less of a threat to lives and property. The proposed road policy would require that issues such as the need for hazardous fuels treatments be considered prior to making decisions about road decommissioning, upgrading, or new construction.

The strategy also builds on the Joint Fire Sciences Program. It relies on adaptive management, monitoring, research, and the further integration of social sciences. It encourages development of procedures that bring together and overlay agency objectives for watershed protection, species conservation, ecosystem resilience, and public safety.

Research is needed to support restoration. The need for assertive action must be coupled with prudence and caution to minimize unintended consequences. Additional research is needed to support managers in prescribing land management treatments to improve forest ecosystem health, as well as to find ways to increase utilization of small diameter material.

The Consequences of Deferral

The costs of implementing the restoration and maintenance approaches outlined under this strategy are high. Yet, fire suppression costs, public resource losses, private property losses, and environmental damages accruing without treatment are expected to be significantly greater over time.

Successful Restoration and Maintenance Efforts

The optimum method to ensure success in restoring ecosystems is collaborating with the local public in planning efforts. Regional planning, including stakeholders in identifying and assessing values at risk, is an important component of the strategy. The Sierra Nevada Ecosystem Management Project and the Interior Columbia River Basin Management Project are examples of regional-scale planning that address resources at risk and establish priorities for broad geographic areas.

More localized planning processes, including Land and Resource Management Plan (forest plan) revisions and amendments, will integrate specific concerns and priorities at a watershed or landscape scale within the context of regional plans and the Forest Service GPRA Strategic Plan.

Across the nation, awareness is growing about the fire-related consequences that occur in untreated forests and grasslands prone to wildland fire. The following are two examples of citizen-based efforts that have been developed to reduce risks within the interior West's urban interface:

- The Grand Canyon Forests Partnership (joining Arizona Game and Fish, U.S. Fish and Wildlife Service, Arizona State Land Department, Coconino County, City of Flagstaff, Northern Arizona University, Grand Canyon Trust and the Nature Conservancy);
- The Priest-Pend Oreille Stewardship Project that focuses on 7,200 acres of wildland-urban interface lands in the Idaho Panhandle National Forest (joining two community project teams with the Forest Service).

To improve forest ecosystem health and reduce wildland fire risks at larger scales, action needs to be expanded over broader areas and coordinated among Forest Service research, state and private forestry, and National Forest System programs. Restoration and maintenance of fire-adapted ecosystems depends on:

- Understanding and valuing ecological processes as the means to sustain ecosystem health.
- An ability to evaluate options and weigh decisions for long-term outcomes.
- An understanding and acceptance of the tools needed to accomplish restoration goals.
- A commitment to monitoring, evaluation, and research as the basis for adaptive management.
- Working collaboratively with communities and interested parties to build project plans with broad-based local ownership.

Successful implementation of the approach outlined in this strategy requires strong support from Congress and constituents. It must also be recognized that success will depend on applying a combination of traditional and newly developed methods and knowledge.

II. Background, Land Use History and Ecological Change

Background

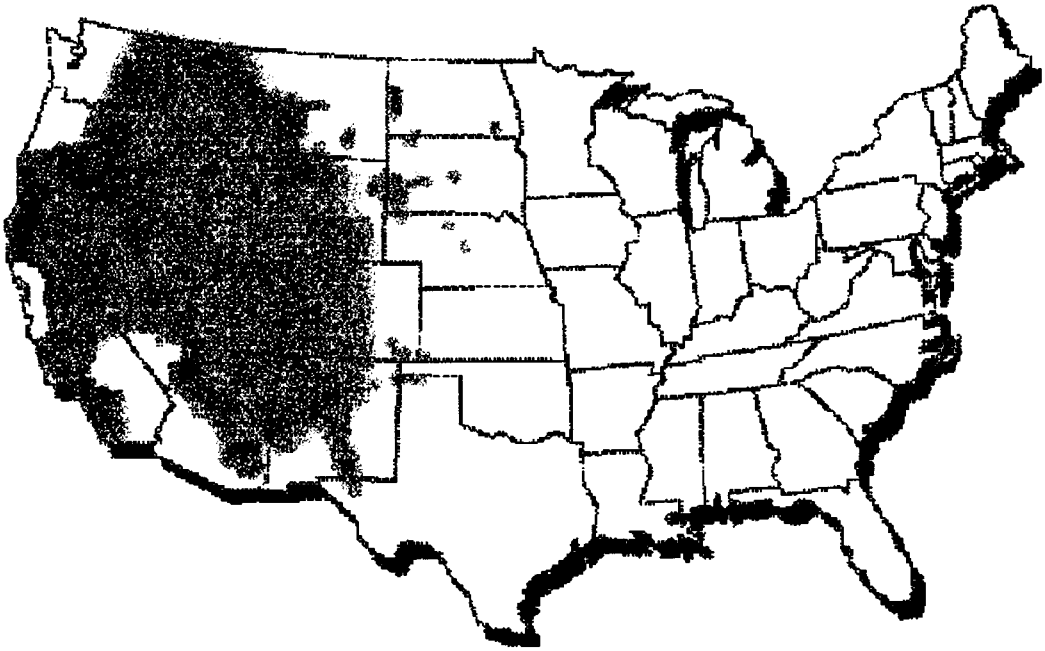

Figure 1—General Affected Area Within the Western United States

Approximately 134 million acres, or about 70 percent of National Forest System lands are in the western U.S. The area is a fire-influenced environment. For thousands of years, the magnitude of burning that occurred in this area was much greater than today. In the upper Columbia River Basin alone—a small portion of the interior West—scientific assessments indicate that prior to European settlement, more than six million acres per year burned. Today, fewer than one-half million acres burn per year in this same area.

Nearly all forests and grasslands in this region evolved and adapted as a result of widespread fire from lightning and burning by Native Americans. These adaptations enabled plant species to survive and regenerate in the presence of fire. Some interior West ecosystems depend on frequently recurring, low-intensity surface burns to cycle nutrients, control pathogens, and maintain healthy, resilient conditions.

These are called ''short interval'' fire-adapted ecosystems. Before the turn of the century, these forested ecosystems were often described as open and savannah or ''park-like,'' with well-spaced, older-aged trees. Grasses and forbs dominated the understories of these forest communities. They were kept in this condition by frequent, low-intensity fires that swept the forest floor.

Land Use History

Many of the wildland fire threats and forest ecosystem health issues that confront us today were triggered more than 100 years ago. In the late 1800s and early 1900s, ''high grade'' logging selectively removed the largest, most valuable trees—often the fire-tolerant ponderosa and other long-needle pine species.

Slash and other brush left behind from logging practices of this era posed tremendous fire risks and contributed to devastating fires in the Great Lakes states and elsewhere. In later years, fire exclusion from plantations of uniform trees of the same age class created conditions conducive to insect and disease infestation and subsequent fires. In later years, logging and other management practices may have further compromised land health by removing overstory trees while leaving smaller trees, slash, and other highly flammable fine fuels behind.

Across open landscapes, early livestock grazing also reduced grass cover and scarified the soil. In forested areas, the bare soil seedbeds that resulted from logging and intensive grazing allowed hundreds of trees to establish on each acre. Without grass fuels to carry surface fires, the number of trees (including fire-intolerant species) multiplied rapidly. These became dense tree stands that foresters termed ''dog-hair'' thickets. Elsewhere, grasslands often converted to brushlands and woodlands.

In the West, the notion of forest protection has historically been equated with fire exclusion. Thus, a primary function of the Forest Service's overall mission became forest fire suppression.

Ecological Change

The unintended consequences of logging, livestock grazing, and fire control resulted in significant changes to species composition and structure—especially in short interval fire-adapted ecosystems. These changes, in turn, predisposed extensive areas to many of today's wildland fire and forest ecosystem health problems in the interior West.

The following photos (figures 2–3), from the Bitterroot National Forest in western Montana, illustrate the changes that have occurred in species composition and forest structure over a 111-year period in a short interval fire-adapted ponderosa pine forest ecosystem. Each photo was taken from the same place, looking at the same forest, at different periods in time. The photos capture the differences that have developed in species composition and forest structure in the prolonged absence of periodic surface burning. Within these ecosystems, these changes become indicators of potential risk.

Changes in Species Composition and Forest Structure

Note: Figures 2 and 3 are not printed in the **Federal Register**. They are available as indicated in the **ADDRESSES** section at the beginning of this notice.

Figure 2—Bitterroot National Forest 1871 Photo

1871 Photo

This serves as the baseline reference of forest stand conditions that evolved from regularly occurring, low-intensity surface burning. The forest was open and dominated by fire-tolerant, fire-adapted ponderosa pine.

Figure 3—Bitterroot National Forest 1982 Photo

1982 Photo

By 1982, the forest has changed dramatically from the one that existed here in 1871. Over this 111-year period, small trees have established in dense thickets and fire-intolerant tree species now crowd the forest. During drought periods the overabundance of vegetation stresses the site, predisposing the forest to insect infestations, disease outbreaks, and severe wildland fire.

In the prolonged absence of periodic surface burning, vegetative growth compounds and dead fuels accumulate. Within the forest, this biomass—in the form of multi-layered tree canopies—can carry flames from the surface where dead branchwood burns up into the tree crowns. In drought years, when vegetation dries, these ''ladder fuels'' contribute to severe, high-intensity wildland fires.

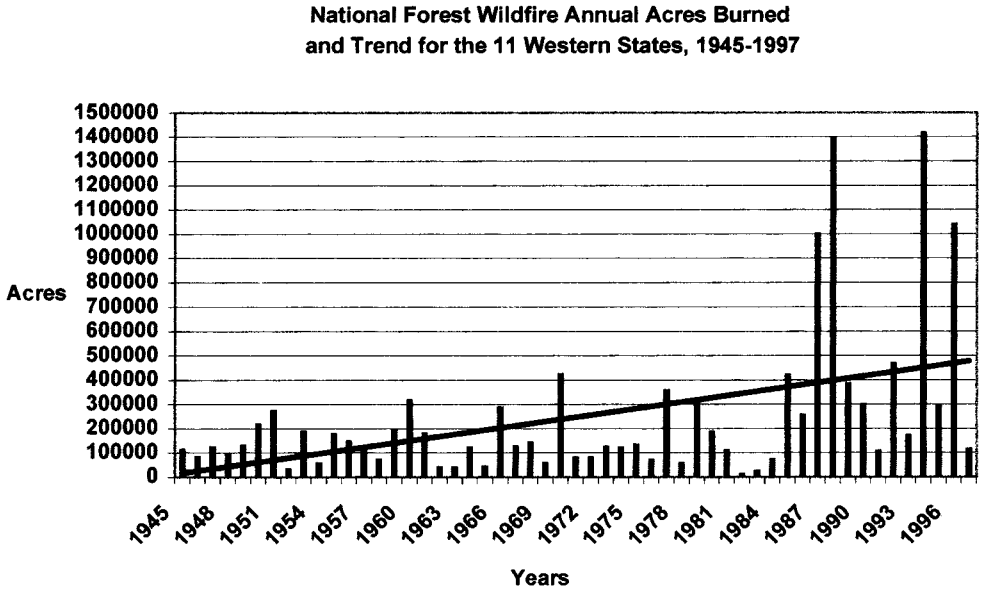

Figure 4—National Forest Wildland Fire Acres Burned Trend in 11 Western States

Under these conditions, wildland fires exceed nearly all control efforts and often result in long-lasting damage to the soil and to the watershed.

In 1871, practically all of the short interval fire-adapted ecosystems in the interior West were considered to be relatively low risk. They were typically open and because of frequent fire had little fuel accumulation. By 1982, the situation had reversed. This elevated risk is apparent when evaluated in the context of Western wildland fire trends (Figure 4). Since approximately 1987—despite better firefighting capabilities—the change in fuel conditions has resulted in an increase in wildland fire acres burned.

For the purpose of this strategy, risk conditions are assigned ''condition class'' descriptors. In short interval fire-adapted ecosystems, Condition Class 1 [for a complete definition, see Appendix *A The Coarse-Scale Assessment and Definition of Fire Regimes and Fire Classes]* (which corresponds to the 1871 Bitterroot N.F. photo) represents low relative risk. As Figure 2 indicates, the Condition Class 1 trend has few small trees and little ground fuel. The scarcity of fuel tends to limit the intensity of wildland fires. At low intensities, wildland fires typically do not kill the larger fire-tolerant trees but often consume small encroaching trees, other vegetation, and dead fuels.

At low intensities, fire is ecologically beneficial because nutrients are cycled. In addition, the soil's organic layer is not consumed at these low fire intensities. The remaining organic material stabilizes the soil surface and helps prevent erosion.

Because fires in Condition Class 1 areas are low-intensity within these ecosystems, they leave the soil intact and functioning normally. These fires generally pose little risk and have positive effects to biodiversity, soil productivity, and water quality.

Note: Figures 5 through 7 are not printed in the **Federal Register**. They are available as indicated in the **ADDRESSES** section at the beginning of this notice.

Figure 5—Increased Density of Smaller Trees Provides Fuel for Vertical Fire Spread

Condition Class 2 situations develop as one or more fire return intervals are missed, primarily due to well-intentioned suppression efforts, while understory vegetation continues to grow, becoming denser. If this accumulating vegetation is not treated, fires begin to burn more intense—making them more difficult to suppress. The impact of fires to biodiversity, soil productivity and water quality become more pronounced.

In Condition Class 3 areas within these same ecosystems, fires are relatively high risk. As Figure 5 indicates, the forest is littered with considerable amounts of dead material and is choked with hundreds of small trees that reach into the crowns of the larger, older-age forest above. During drought years, small trees and other vegetation dry out and burn along with the dead material—fueling severe, high intensity wildland fires. At these intensities, wildland fires kill all of the trees—even the large ones that, at lower fire intensities, would normally survive.

Within Condition Class 3 in these short interval fire-adapted ecosystems, wildland fires usually damage key ecosystem components, including the soil. High-intensity fires consume the soil's organic layer and burn off or volatilize nutrients. When small twigs, pine needles, and other litter are consumed, water runs unimpeded over the surface. Under these circumstances, the soil becomes more susceptible to erosion (Figure 6).

Figure 6—Buffalo Creek Fire, Colorado

These photos, of Colorado's Buffalo Creek Fire aftermath, illustrate soil severity burned and left exposed to rain and runoff. This produced the subsequent 1996 flash flood that claimed two lives. The ensuing erosion also washed topsoil off hillsides, clogging downstream watercourses. This erosion reduced future storage capacity of reservoirs and silted-over the river's gravel beds—significantly reducing spawning habitat.

At extreme fire intensities, the soil's capacity to absorb water is often lost. The fine, powder-like ash that follows a severe wildland fire on these sites makes water bead on the surface. These so-called ''hydrophobic conditions'' result in highly erodable soils.

Condition Class 3 is classified as high risk because of the danger it poses to people and the severe, long-lasting damage likely to result to species and watersheds when a fire burns—particularly in drought years. Firefighters are especially cognizant of hazards in Condition Class 3 situations. In a national survey (Tri-data, 1995), nearly 80% of all firefighters identified fuel reduction as the single-most important factor for improving their margin of safety on wildland fires.

In Condition Class 3, fires become more costly when homes are involved. Throughout much of the interior West, short interval fire-adapted ecosystems are typically located in valley-bottoms where homes and human development are most concentrated. Just as building homes in floodplains exposes homeowners to risk of floods, if hazardous fuels accumulations persist, development in fire-adapted ecosystems may pose a tangible risk to communities.

An example from the 2000 fire season demonstrates the increased costs of fighting fire near people and homes. The Skalkaho Fire on the Bitterroot National Forest covered 64,000 acres of forest interspersed with homes. It employed 755 firefighting personnel at a cost of $7.2 million dollars. Meanwhile, on the same forest within the Selway-Bitterroot Wilderness Area, a fire that burned about the same acreage (63,0000 acres) only required 25 firefighters at a cost of approximately $709,999.

Efforts to reduce hazardous fuels on federal lands must be coupled with efforts to assist private landowners to take preventative action in their own communities. Creating defensible perimeters around homes, improving building codes, and employing fire resistant landscaping will help reduce fire risk to communities. These and other such actions can help prevent wildland fires from burning homes, reduce insurance premiums, and reduce suppression cost.

Figure 7—Homes Burning in the Dude Fire, Arizona, 1990

The Dude Fire burned in central Arizona in Condition Class 3 stand conditions. Although the fire only burned a few days, it resulted in the death of six firefighters and cost $7.5 million to control. It destroyed 75 homes, resulting in property loss of $12 million. No estimate is available on the resource losses involved.

III. Ensuring Clean Air, Clean Water, and Biodiversity in Fire-Adapted Ecosystems

Sustainability: ''Meeting the needs of the current generation without compromising the ability of future generations to meet their needs. Ecological sustainability entails maintaining the composition, structure and processes of a system, as well as species diversity and ecological productivity. The core element of sustainability is that it is future oriented.'' Committee of Scientists Report, 1999.

The Legal Basis for Sustainability

A suite of federal laws and regulations guide management of National Forest System lands and fire-related activities on those lands. These include the Organic Act, Clean Air Act, Clean Water Act, Endangered Species Act, National Environmental Policy Act, and National Forest Management Act. Long-term sustainability is a consistent theme embodied within these laws.

Sustaining natural resources in short interval fire-adapted ecosystems is a basis of the cohesive strategy outlined in this report.

Legal Basis for Sustainability

Endangered Species Act

''The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved * * * ''

Clean Water Act

''(a) Restoration and maintenance of chemical, physical and biological integrity of the nation's waters * * * The objective of this chapter is to restore and maintain the chemical, physical, and biological integrity of the nation's waters.''

Clean Air Act

''(1) to protect and enhance the quality of the nation's air resources so as to promote the public health and welfare and the productive capacity of its population.''

National Forest Management Act (NFMA)

''(6) the Forest Service * * * has both a responsibility and an opportunity to be a leader in assuring that the nation maintains a natural resource conservation posture that will meet the requirements of our people in perpetuity.''

National Environmental Protection Act (NEPA)

''(a) Creation and maintenance of conditions under which man and nature can exist in productive harmony.''

The Forest Service Government Performance and Results Act (GPRA) Strategic Plan (2000 revision) bridges law and Forest Service activities. This report's cohesive strategy anchors to the following GPRA Strategic Plan's specific objectives:

- Improve watershed conditions and restore hydrological processes;
- Improve habitat quality; and conserve fish, wildlife and plant populations;
- Improve ecosystem resiliency associated with fire adapted ecosystems; and
- Reduce the relative risk of damage to human communities associated with wildland fire.

The overarching purpose of the GPRA Strategic Plan, consistent with these laws, is to maintain healthy, diverse ecosystems that meet human needs on a long-term basis. Sustaining healthy, diverse conditions requires consideration of entire landscapes in the context of specific ecosystems and their ecological dynamics.

The Need for Adaptive Management

Increased human population growth, expanded land-use development, and changes in natural ecosystems affect ecosystem dynamics and processes. In the short interval fire-adapted systems, over-accumulated fuels indicate that more wildland fires in the future may burn with uncharacteristic fire effects. This trend may result in higher corresponding threats to human life and property, as well as potentially more degraded ecosystems.

Planning in fire-adapted ecosystems requires an integration and

understanding of: fire history, potential fire behavior, past management actions, land-use change, watershed needs, species viability, and relative risk to human communities. Uncertainties associated with these considerations are addressed through monitoring, research, and adaptive management. During planning and implementation of restoration activities, the best available science and frequent monitoring must be used to reduce uncertainty and to facilitate learning. In addition, public outreach and collaboration will be critical components to successful ecosystem restoration.

While some ecosystems are adapted to infrequent high-intensity burning, the short interval fire-adapted ecosystems are not. The primary emphasis of the strategy is ensuring protection of human values and the sustainability of natural resources in the context of short interval fire-adapted ecosystems

Active Management Improves Habitat

Most research involving relationships between fire and wildlife has focused on mammals and birds, with an emphasis on habitat, rather than populations (Smith, 2000). The cause and effect relationships between fire and wildlife are only correctly understood in the context of specific ecosystems.

Research reveals that active management can improve habitat quality for some species dependent on fire-adapted ecosystems, such as Kirtland's warbler (Probst and Weinrich, 1993) and the red cockaded woodpecker. For example, the relationship between fire and bobwhite quail populations served as an important factor in initiating the prescribed burning program in the South's fire-adapted forests.

The effectiveness of ecosystem restoration in contributing to species conservation is dependent on the extent to which landscape patterns and processes support population persistence over the long term (Wilcove, 1999). For example, sage grouse population dynamics are dependent on landscape patterns (Knick, 1999); yet many factors affect the integrity of sagebrush ecosystems across landscapes following fire (such as the expansion of cheat grass).

Considering the extent of habitat alteration that has occurred over the past century, management for species conservation in fire-adapted ecosystems is complicated. In many areas, habitat is currently at risk of long-term loss from severe wildland fires. In some cases, further reduction of habitat due to severe wildland fires may threaten species viability.

Integrating ecosystem restoration goals with species conservation priorities will require coordinated effort between planned land uses to improve the quantity and quality of potentially suitable, but presently unoccupied habitat. This must occur prior to treating any areas that serve as refugia for remnant populations (Noss *et al.* 1997).

Using Adaptive Management to Evaluate Results

The type, intensity and frequency of management activity in fire-adapted ecosystems will influence the ability to provide for clean air, clean water, and biodiversity over the long term. A considerable amount of science supports an understanding of fire-adapted ecosystems. Some uncertainty, however, surrounds management treatments. It is therefore essential that an adaptive management framework involving the public be used in designing, monitoring, and evaluating activities. Assumptions associated with management approaches across broad landscapes need to be clearly identified and articulated as a part of the adaptive management process.

In developing manual direction and regional and local level plans for implementing the strategy, it is essential that monitoring be conducted to validate assumptions, reduce uncertainties, and measure progress. Upon completion of these actions, the agency will determine whether to continue pursuing ongoing management, modified management approaches, or to propose new actions in response to what was learned through monitoring. The strategy will evolve as planning decisions are made on the ground and results are evaluated. While some uncertainties exist, implementing this strategy may help to avoid serious consequences that are certain to occur if fuel reduction treatments are deferred.

IV. A Cohesive Strategy to Protect People and Sustain Resources in Fire-Adapted Ecosystems

This cohesive strategy provides a broad national framework for aligning the social, program management, and institutional elements that will be required to restore fire-adapted ecosystems. These three elements underpin this strategy.

Implementation will be based on regional assessments, integrated planning processes, public input, and collaboration with other agencies. Environmental documentation for on-the-ground projects will contain many of the ''how to'' actions necessary to move the strategy forward in a manner that is consistent with law, regulations, and Forest Service policy.

Priorities for Restoration

Specific areas of emphasis in the strategy include reducing risk within the wildland-urban interface, readily accessible municipal watersheds, and threatened and endangered species habitat. However, it is equally important to maintain existing low risk areas from developing into moderate or high-risk. To this end, the following priorities will apply when designating areas for treatment.

- *Wildland-urban interface.* Wildland-urban interface areas include those areas where flammable wildland fuels are adjacent to homes and communities.
- *Readily accessible municipal watersheds.* Clean water is the most critical resource in many western states. Watersheds impacted by uncharacteristic wildfire effects are less resilient to disturbance and unable to recover as quickly as those that remain within the range of ecological conditions characteristic of the fire regime under which they developed.
- *Threatened and endangered species habitat.* The extent of recent fires demonstrates that in fire-adapted ecosystems few areas are isolated from wildfire. Dwindling habitat for many threatened and endangered species will eventually be impacted by wildland fire. The severity and extent of fire could eventually push declining populations beyond recovery.
- *Maintenance of existing low risk Condition Class 1 areas.* This is especially important in the southern and eastern states where high rates of vegetation growth can eliminate the effects of treatment in 5–10 years. Recent droughts have caused severe wildland fire problems in Florida and Texas.

Supporting Scientific Evidence

Considerable scientific evidence supports use of prescribed fire and other management treatments in fire-adapted ecosystems to reduce risk of catastrophic wildland fire, improve ecosystem resilience, and restore plant community composition, structure, and landscape patterns.

Several examples of small-scale watershed improvement projects exist in national forests in fire-adapted systems. Virtually all use prescribed fire and mechanical treatments to improve watershed conditions. Fuel reduction work can reduce potential fire severity, which, in turn, can reduce potential erosion. Conditions that favor low intensity burning on these sites help

prevent erosion and leave more organic material that filters water and improves water quality characteristics.

At landscape scales, the effectiveness of treatments in improving watershed conditions has not been well documented. Many scientists, however, agree that careful application of treatments across larger scales can restore water quality.

Degraded air quality associated with long-duration wildland fires has been widely experienced in the West. Because wildland fires tend to occur at the driest time of year when dead fuels and vegetation is also driest, they are more completely consumed and typically produce three to five times more emissions than early or late-season prescribed fires.

In Condition Class 3 and some Condition Class 2 situations, the strategy advocates mechanical thinning of small trees, brush and shrubs to reduce fire intensities and particulate emissions during prescribed burning. This practice, although expensive, opens prescription windows of opportunity—enabling managers to capitalize on better weather conditions for smoke ventilation and dispersal.

The extent to which management for ecosystem resilience can improve air quality over the long term is not completely known. Present regulatory policies measure prescribed fire emissions, but not wildland fire emissions. The emissions policy tends to constrain treatments and—in short interval fire systems—may act to inadvertently compound wildland fire risks. A growing body of scientific evidence suggests that mechanical treatments followed by prescribed fire can reduce the overall adverse impacts to air quality by reducing the amount of fuel that would otherwise be available during the wildland fire season.

The Three Cohesive Elements

Social

- Establish an objective for conservation awareness in the Forest Service Government Performance and Results Act (GPRA) Strategic Plan (2000 revision). Emphasize the need to increase public awareness of the role of ecological processes in ecosystem sustainability (Appendix B).
- Initiate collaborative planning with stakeholders to identify and evaluate ecosystem restoration and maintenance needs and opportunities. Utilize science-based assessments of present and projected ecosystem conditions as a basis for determining restoration needs.
- To promote fire-safe local planning, zoning, and building requirements, establish partnerships with other federal agencies, states, communities, and the insurance industry.

Encourage and assist communities to take responsibility for sharing in risk reduction and fire prevention efforts.

Institutional

Long-Term Policy Assessment

- Establish objectives, strategies, and milestones for restoration and maintenance of fire-adapted ecosystems in the Forest Service GPRA Strategic Plan. Emphasize integration in objectives for public safety, watershed protection, species conservation, and ecosystem resilience. (Appendix B.)
- Establish ecosystem restoration as a performance element in the Forest Service Annual Performance Plan. Use changes in condition class as one of the measures for annual performance and accountability. (Appendix B.)
- Establish assessment procedures that integrate considerations of current ecosystem condition (status), probability of degradation from disturbance events (risk), and alternatives to reduce risk or improve conditions (opportunity). Include objectives at the national, regional and local scales for: watershed protection, species conservation, ecosystem resilience, and public safety. Coordinate information across all program areas.

Program Management

At the National Level

- Concentrate projects in the shorter interval fire-adapted ecosystems (Fire Regimes I and II), with emphasis in Condition Classes 2 and 3. (GPRA 1c.)
- Establish the interior West as a priority for restoration. (GPRA 1c.)
- Direct funds—in an integrated fashion—to highest values to be protected, especially for: watersheds (GPRA 1a), species (GPRA 1b), ecosystems (GPRA 1c), and human communities (GPRA 4b).
- Explore innovative use of existing authorities for grants, agreements, and contracts for project execution such as service contracts to hire local people.
- Emphasize long-term training and community development opportunities through restoration activities.
- Establish program reviews at regular intervals to determine if adjustments are needed. Take into account: budget, the findings of regional assessments, finer-scaled risk and hazard mapping, and other planning efforts.

At the Regional Level

- Conduct regional assessments, establishing restoration and maintenance priorities consistent with values to be protected (watersheds, species, human communities) in collaboration with other federal agencies, tribes, state and local government, and constituents.

At the National Forest and Grassland Level

- In Land and Resource Management Plan amendments and revisions: identify land by condition class categories, discuss the resources to be protected from catastrophic wildland fire including human communities, watersheds, threatened and endangered species habitats, and establish landscape goals to achieve sustainable ecosystems. Goals should be included to reduce acres at risk.
- Establish monitoring and evaluation programs and measures in Land and Resource Management Plan revisions for restoration activities in fire-adapted ecosystems.
- Consistent with Land and Resource Management Plans, develop fire management plans that provide for suppressing fires that would threaten public safety, communities, species habitat, or degrade ecosystems. Increase the management of natural ignitions for resource benefits where values and resources will be increased or improved.

State and Private Forestry

- Expand efforts such as the Firewise Communities Program to assist communities and homeowners in the urban wildland interface to take preventative and corrective actions to protect lives and property from fire. Provide assistance in conducting risk and hazard assessments in developing community disaster plans, and in educating the public about measures they can take to protect their property.

Research and Development

- Strengthen Forest Service research programs to evaluate ecological, social, and economic tradeoffs and other issues; develop more effective prediction systems; and quantify disturbance effects and ecological interactions in fire regimes. Continue funding the Joint Fire Sciences Program.
- Study, document and monitor examples of various treatments and their effectiveness in restoring ecological processes, protecting communities, and protecting key ecosystem components.
- Research the long-term results of rehabilitation techniques and help determine those most effective at restoring ecological processes and habitats.

Funding

- Establish an integrated budget structure that facilitates an accomplishment of the GPRA Strategic Plan elements: Watershed Restoration, Species Conservation, Ecosystem Processes, and the Protection of Human Communities.
- Wildland fire preparedness funding requests should be made at the most efficient level, as defined by the National Fire Management Analysis System.

Actions Requiring External Collaboration

Long-Term Policy Assessment

Collaborate with the Environmental Protection Agency, National Marine Fisheries Service, and the U.S. Fish and Wildlife Service in addressing long-term impacts, tradeoffs, and issues to air quality, watershed resilience, species conservation, ecosystem integrity, and public safety as a result of each agency's respective policy in the context of fire-adapted ecosystems. Identify opportunities for improved coordination between regulatory and land management agencies in achieving restoration and maintenance objectives to protect people and sustain resources in fire-adapted ecosystems.

Economic Feasibility Assessment for Fuel Utilization

Because understory biomass has little or no value, disposing of it becomes problematic. Small diameter material, however, may become more economically feasible if assessments for its utilization more comprehensively evaluate tradeoffs and risks to watershed and species values, public health and safety, and other factors that may benefit from reducing fuels in fire-adapted ecosystems. Projected wildland fire costs, resource losses, and environmental damage, all suggest that developing and supporting markets for utilization of over-accumulated biomass may be desirable.

Consistent with Executive Order 13134 ''Developing and Promoting Biobased Products and Bioenergy'', collaborate with other agencies and organizations to conduct economic feasibility analyses of increased biomass utilization.

The FY 2001 budget includes a Presidential bio-based products and bio-energy initiative. This initiative supports research and development, demonstration and commercialization, and outreach and education activities. The Forest Service will take a leadership role in this effort.

Projected Treatment Schedule at Full Program Implementation

Different treatment schedules are displayed below. The strategy does not include a treatment target of a fixed number of acres within a set period of time. The number of acres actually treated will depend on different circumstances, including available funding. The treatment schedule displayed below illustrates potential costs over varying time frames. Actual treatment costs and rates will depend on a variety of circumstances.

The purpose of the report is to establish priorities and a rationale for restoration. Local Land and Resource Management Plans and community involvement will help to guide the types and locations of treatment actions. Enhancing forest ecosystem health is best accomplished at the local level with on-site examination and experience.

Tables 1a, 1b, and 1c provide estimates of a potential annual program to achieve restoration goals within 10, 15, and 20-year time periods.

This information was developed using regional input based on Land and Resource Management Plan and other assessments. Strategy implementation will be consistent with forest plan direction and other ongoing initiatives. Acreage estimates give consideration to regulatory obligations for clean air, clean water, and threatened or endangered species habitat. These goals are expected to change as the Forest Service refines these data. More accurate regional and sub-regional assessments, integrated planning processes, and public collaboration may refine these figures.

10-YEAR TREATMENT SCHEDULE				
Regions 1-6 Treatment Schedule (acres)				
	Year 1	Year 2	Year 3	Year 4-10
CC1	200,000	400,000	600,000	800,000
CC2	500,000	850,000	1,400,000	2,500,000
CC3	300,000	700,000	1,100,000	1,650,000
Total	1,000,000	1,950,000	3,100,000	4,950,000
Regions 8-9 Treatment Schedule (acres)				
	Year 1	Year 2	Year 3	Year 4-10
CC1	770,000	1,000,000	1,150,000	1,250,000
CC2	220,000	350,000	470,000	640,000
CC3	50,000	60,000	60,000	60,000
Total	1,040,000	1,410,000	1,680,000	1,950,000

Table 1a—10-Year Schedule To Increase the Annual Hazardous Fuels Treatment Program.

15-YEAR TREATMENT SCHEDULE				
Regions 1-6 Treatment Schedule (acres)				
	Year 1	Year 2	Year 3	Year 4-15
CC1	150,000	250,000	400,000	500,000
CC2	450,000	700,000	1,100,000	1,500,000
CC3	200,000	500,000	750,000	1,000,000
Total	800,000	1,450,000	2,250,000	3,000,000
Regions 8-9 Treatment Schedule (acres)				
	Year 1	Year 2	Year 3	Year 4-15
CC1	750,000	780,000	780,000	780,000
CC2	200,000	380,000	380,000	380,000
CC3	300,000	400,000	400,000	400,000
Total	980,000	1,200,000	1,200,000	1,200,000

Table 1b—15-Year Schedule To Increase the Annual Hazardous Fuels Treatment Program

20-YEAR TREATMENT SCHEDULE					
Regions 1-6 Treatment Schedule (acres)					
	Year 1	Year 2	Year 3	Year 4	Year 5-20
CC1	100,000	150,000	225,000	325,000	375,000
CC2	400,000	600,000	750,000	900,000	1,100,000
CC3	200,000	300,000	400,000	550,000	750,000
Total	700,000	1,050,000	1,375,000	1,775,000	2,000,000
Regions 8-9 Treatment Schedule (acres)					
	Year 1	Year 2	Year 3	Year 4	Year 5-20
CC1	400,000	400,000	450,000	500,000	620,000
CC2	120,000	150,000	200,000	250,000	300,000
CC3	25,000	25,000	30,000	30,000	30,000
Total	545,000	575,000	680,000	780,000	950,000

Table 1c—20-Year Schedule To Increase the Annual Hazardous Fuels Treatment Program

V. Consequences of Deferral

''* * * in many of the interior West forests, the costs and risks of inaction are greater than the costs and risks of remedial action.''

Concluding comments from academic and agency scientists. Assessing Forest Ecosystem Health in the Inland West Workshop (November, 1993).

This chapter projects suppression costs, natural resource and private property losses, and environmental damages expected under present treatment schedules and compares them with the costs, losses and damages anticipated for the mid-range treatment schedule shown on Table 1c. If

treatment schedules are accelerated, objectives may be met sooner. If treatment schedules are extended, results may be deferred. Three alternative treatment timeframes are presented in the strategy. For demonstrative purposes, changes over time are projected using the 15-year treatment schedule (figures 8,10, 11, and 12).

Commodity values are well established. Non-commodity values, however, are more difficult to determine. Economic research is ongoing to better describe and quantify amenity values including ecosystem components, natural resources, and safety considerations involved in tradeoff analysis. Tradeoff analysis measures the costs, benefits, and risks under different protection strategies. It is one way to compare the expected outcomes of different management scenarios.

Fire-adapted ecosystems are dynamic. With any treatment schedule, live vegetation will continue to grow and dead wood will continue to accumulate. Risk conditions will continue to increase as some forests and grasslands areas migrate from lower-risk conditions to higher-risk conditions. During this same time period, severe wildland fires will continue to occur—reducing high-risk acres, but also potentially damaging ecosystem components and natural resources.

Areas at Risk

As human populations continue to expand, threats to species viability, watershed health, and ecosystem integrity will grow. The situation will be exacerbated as forest fuels accumulate and fire risks increase. Even at current levels of treatment, risks to species, watersheds, forest health, and human communities throughout the interior West are escalating due to increasing fuels buildups (vegetation) in fire-prone environments. The answer is not in bigger and better firefighting apparatus. At very high fuel loadings, fire behavior overwhelms even the best fire suppression efforts. Under extreme conditions, control of fire becomes dependent on relief in weather or a break in fuels.

Reducing fuels and restoring fire's ecological role in fire-adapted ecosystems can reverse many adverse trends that serve as important indicators of ecosystem sustainability. To demonstrate the strategy's benefits, graphs from a recent assessment of several indicators for the Western states were developed to illustrate trends (figures 8, 10, 11, 12). These graphs reflect assessments from a recently completed national-scale evaluation (see Appendix D). They are based on coarse-scale data that model averages for the area under study. They cannot be directly applied to areas smaller in scale than the analysis area. The data are not directly applicable to fine-scale analysis; they serve to evaluate relative risk trends among different management options.

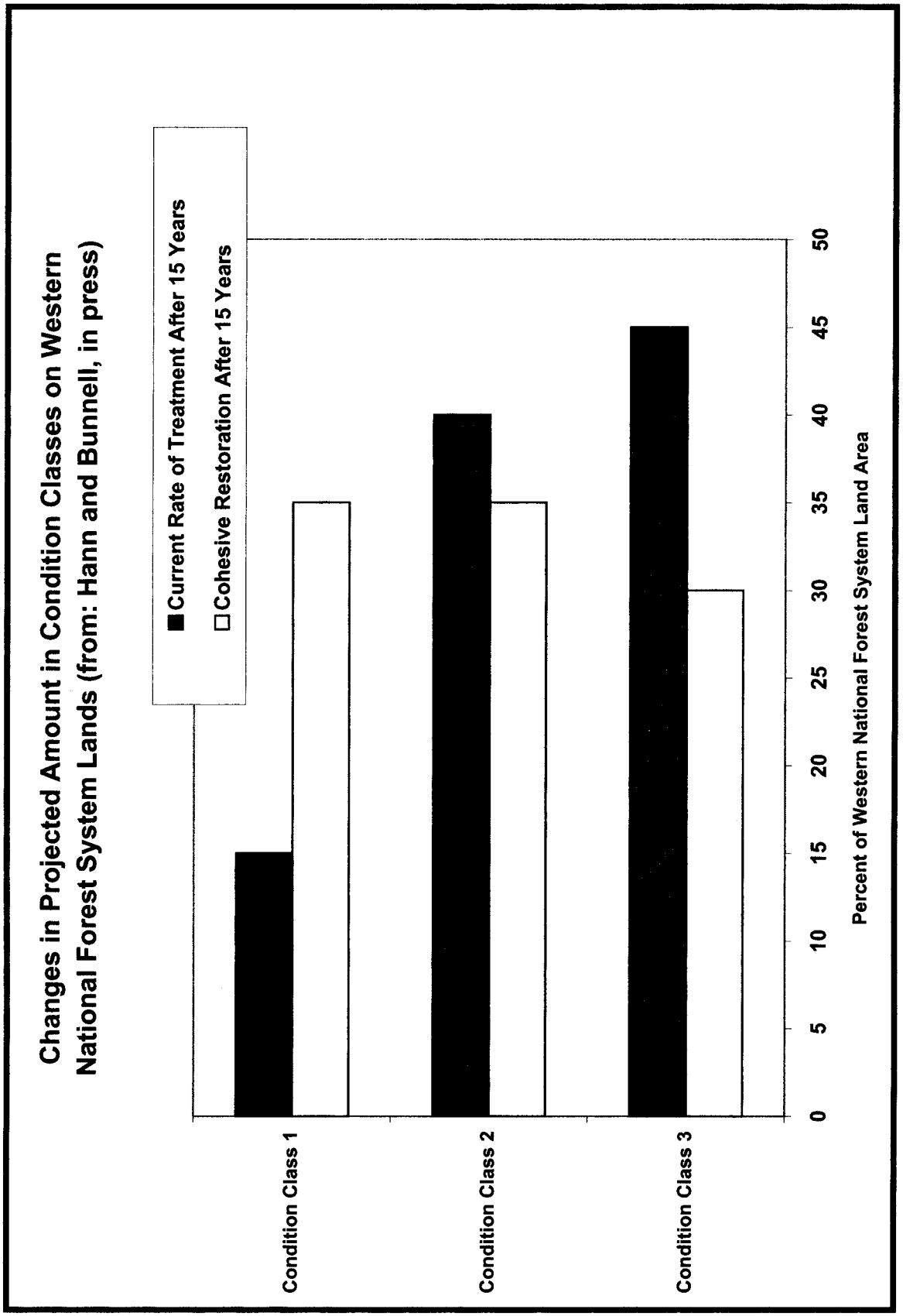
Changes in Projected Amount in Condition Classes on Western National Forest System Lands (from: Hann and Bunnell, in press)
Current Rate of Treatment After 15 Years
Cohesive Restoration After 15 Years
Condition Class 1
Condition Class 2
Condition Class 3
0
5
10
15
20
25
30
35
40
45
50
Percent of Western National Forest System Land Area

Figure 8

The assessment was based on a projection using the 15-year treatment schedule. Results for the 10 and 20-year treatment schedules will vary from this only in the time required to achieve the same level of results. At 100 years, the social, economic, and ecological benefits of restoration treatments become exponentially greater. And, as treatments shift from restoration to maintenance, treatment costs will go down.

At the current rate of treatment (0.75 million acres/year), the acres at high risk in the interior West will increase over the next 15 years. Implementing the approaches outlined in this strategy can increase levels of treatment and decrease moderate and high-risk categories (Condition Classes 2 and 3). It will restore proportionately more low-risk areas (Condition Class 1). The strategy therefore substantially reduces risk over the current rate of fuel reduction treatment.

Without increased restoration treatments in these ecosystems, wildland fire suppression costs, natural resource losses, private property losses, and environmental damage are certain to escalate as fuels continue to accumulate and more acres become high-risk.

Suppression Costs

Suppression strategies (and their associated costs) are determined using the Wildland Fire Situation Analysis (WFSA), a required assessment process on federal lands. Under this system, suppression costs are calculated from an array of alternatives prior to selecting a fire suppression strategy. The analysis weighs values to be protected. Firefighter and public safety always serves as the first criteria. As a general rule, depending on the circumstances surrounding a particular wildland fire, resource or private values to be protected are typically two to five times greater than the expected suppression costs, as calculated using the WFSA.

The Line Officer selects the most appropriate strategy and, in doing so, approves the expected suppression costs. If the strategy fails or if costs exceed the expected level, the Line Officer must reevaluate alternatives and approve any changes.

Suppression costs and wildland fire acres burned (Figure 9) have increased due to over-accumulation of fuels and a corresponding increase in high-risk acreage and drought conditions. In recent years, large fires have become more damaging and more costly. *Unless the rate of restoration is increased, larger burned acreages and higher wildland fire suppression costs should be expected.*

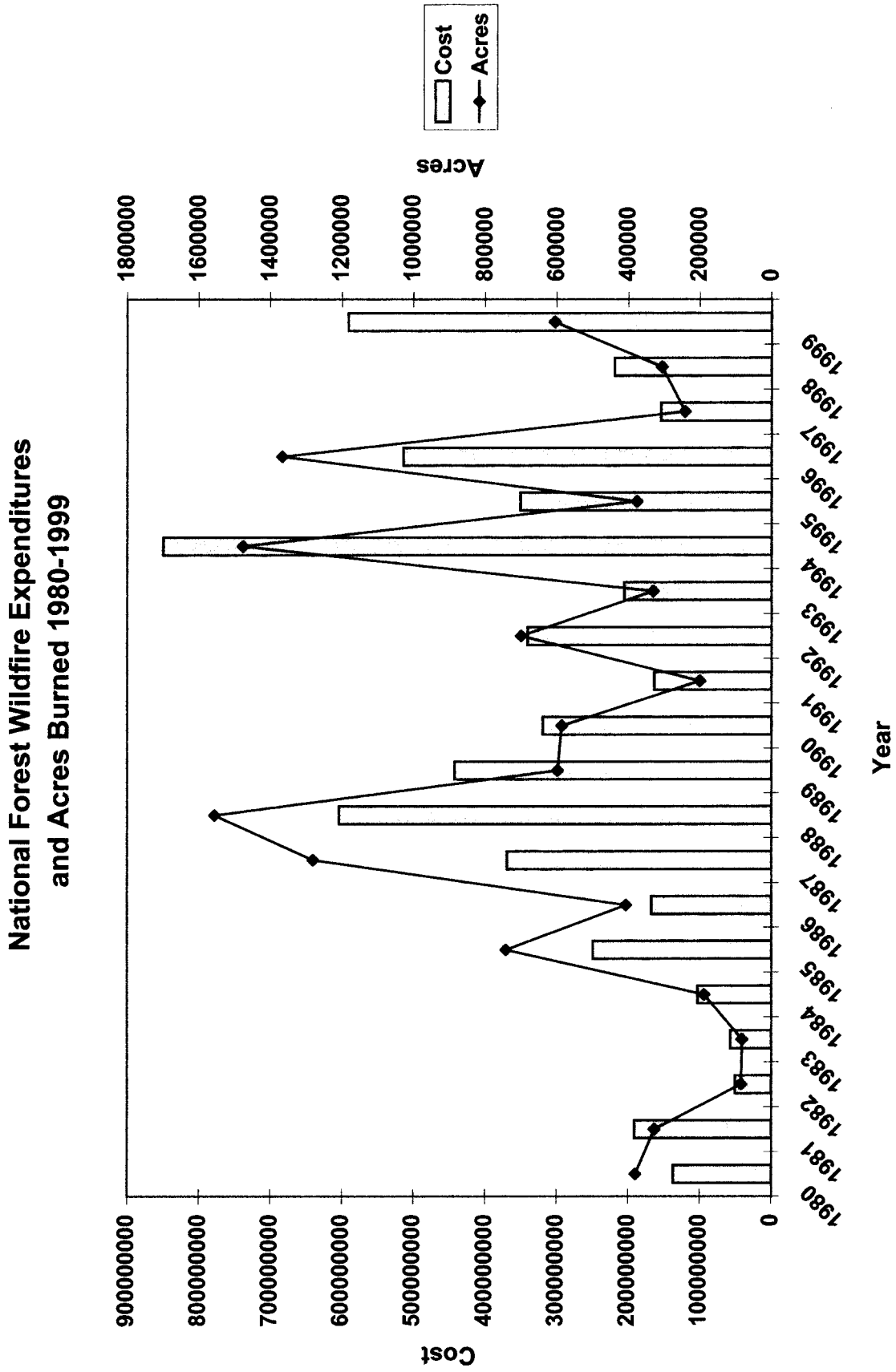
National Forest Wildfire Expenditures
and Acres Burned 1980-1999
Cost
Acres
Year
Cost
Acres
900000000
800000000
700000000
600000000
500000000
400000000
300000000
200000000
100000000
0
1800000
1600000
1400000
1200000
1000000
800000
600000
400000
200000
0
1980
1981
1982
1983
1984
1985
1986
1987
1988
1989
1990
1991
1992
1993
1994
1995
1996
1997
1998
1999

Figure 9

Loss to Private Property and Resource-Based Commodities

As human populations grow and shifting demographics concentrate more people in or adjacent to wildlands, more private property will be at risk to catastrophic wildland fires.

According to the National Fire Protection Association, wildland-urban interface fires from 1985 to 1994 destroyed 8,925 homes. During dry years or under adverse weather conditions, because they occur in high-risk fuels, many wildland-urban interface fires exceed firefighting capabilities.

No forest can be made fireproof. As homes and communities are built in the wildland interface, they face added risk of fire. Efforts to reduce hazardous fuels on federal lands must be coupled with efforts to assist private landowners to take preventative action in their own communities.

Research suggests that the most effective way to reduce risk of fire to homes in the wildland-urban interface is through fuels treatment carried out within 200 feet of building structures (Cohen, 1999). Homes with high ignitibility factors, such as pine needle accumulation on roofs and in yards and firewood piles next to houses, frequently suffer more severe fire damage than other areas.

When fuel loadings are reduced, protection of life and property is significantly improved (Fischer, 1988).

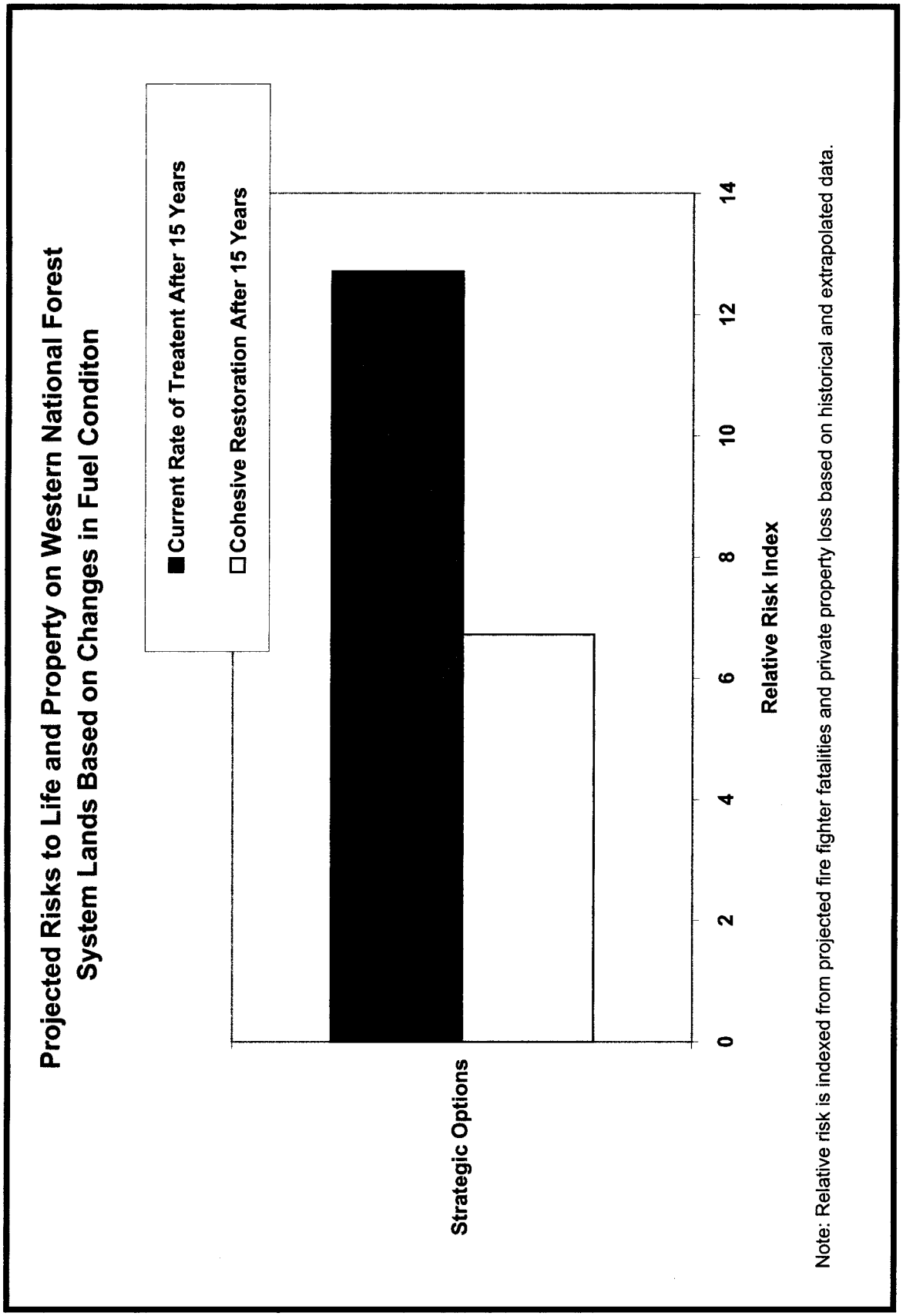
Projected Risks to Life and Property on Western National Forest System Lands Based on Changes in Fuel Conditon
Current Rate of Treatent After 15 Years
Cohesive Restoration After 15 Years
Strategic Options
0
2
4
6
8
10
12
14
Relative Risk Index
Note: Relative risk is indexed from projected fire fighter fatalities and private property loss based on historical and extrapolated data.

Figure 10

The National Research Council and the Federal Emergency Management Agency (FEMA) recognized wildland fires in California (1993) and Florida (1998) as among the defining natural disasters of the 1990s. In terms of damage, the magnitude of these catastrophic fires were compared with the Northridge earthquake, Hurricane Andrew, and flooding of the Mississippi and Red rivers.

The 1991 Oakland, California fire was ranked by insurance claims as one of the ten most costly all-time natural catastrophes. More wildland fire disasters of this scale can be expected in the absence of a mitigation strategy. FEMA is emphasizing mitigation and prevention to state and local governments to address the growing losses from natural disasters such as hurricanes and flooding. The strategy outlined in this report complements the efforts to forestall disaster-related costs and losses.

Damage to commodity resources such as wood fiber and watersheds often result from severe wildland fire. These losses can be significant. For example, the Big Bar Fire Complex, consisting of five fires that burned during the late summer of 1999 in northern California. The Complex burned 141,000 acres on and adjacent to the Six Rivers National Forest. The Big Bar Complex cost $81 million to suppress and $6 million for burned-area rehabilitation. It resulted in a preliminary estimate of $122 million in resource losses, including loss of marketable timber.

Environmental Damage

Any restoration strategy should be evaluated in the context of the ecosystem under consideration. Wildland fires occurring in the shorter interval fire-adapted ecosystems where fuels have accumulated over several missed fire cycles often burn with uncharacteristic wildfire effects. Consequently, habitats, soils, and watersheds are burned beyond their adaptive limits. The severity of these fires pose threats to species persistence and watershed integrity. The damage from these fires is often long-lasting and, within some ecosystems, may be irretrievable.

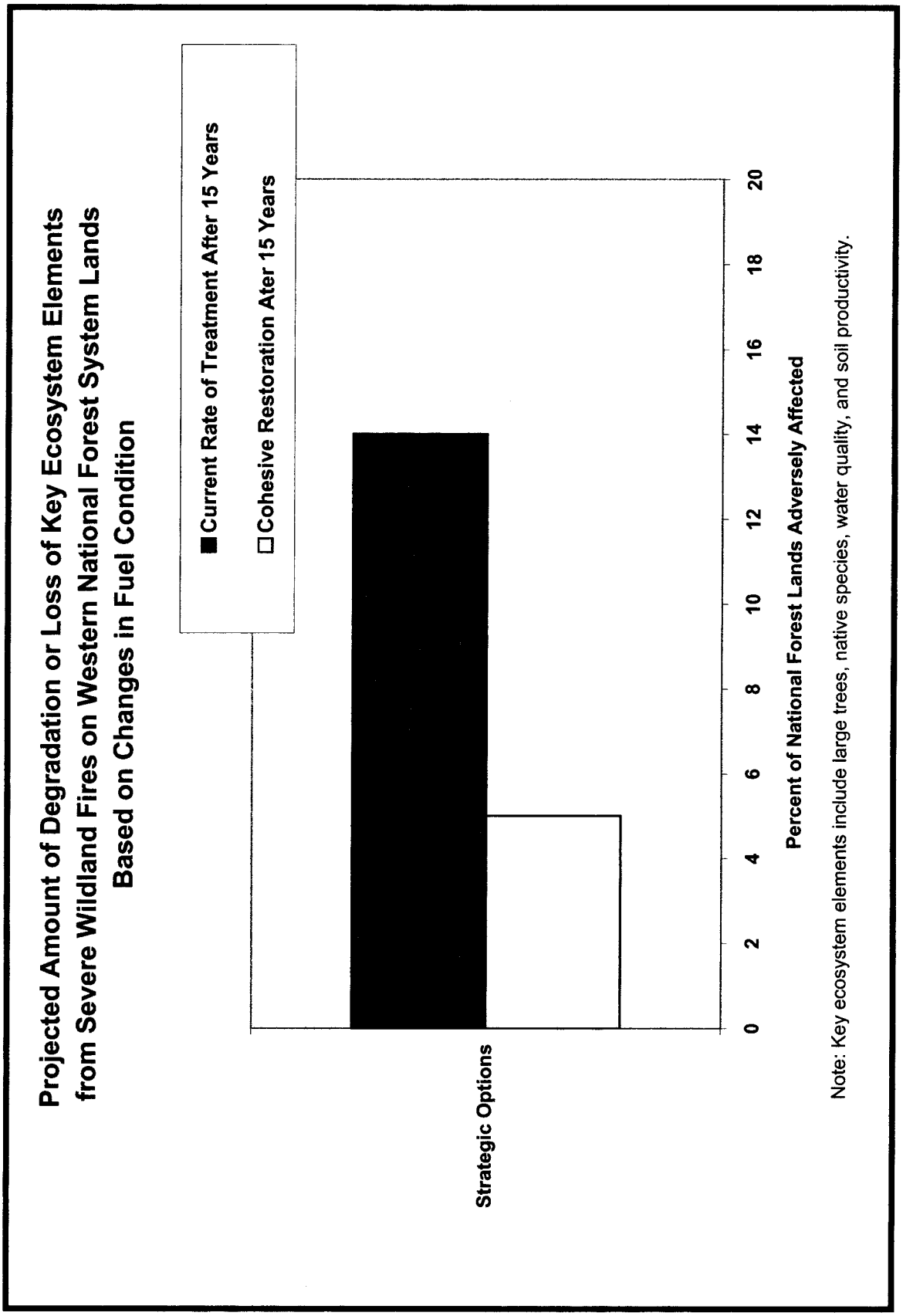
Projected Amount of Degradation or Loss of Key Ecosystem Elements
from Severe Wildland Fires on Western National Forest System Lands
Based on Changes in Fuel Condition
Current Rate of Treatment After 15 Years
Cohesive Restoration Ater 15 Years
Strategic Options
0
2
4
6
8
10
12
14
16
18
20
Percent of National Forest Lands Adversely Affected
Note: Key ecosystem elements include large trees, native species, water quality, and soil productivity.

Figure 11

With an increasing number of large, uncharacteristically damaging wildland fires in short interval fire systems, we can eventually expect:

- Loss of critical habitat for fish, wildlife, and plant species at risk.
- Soil erosion and loss of site stability and productivity.
- Changes in temperatures and moisture regimes on certain sites.
- Increased spread of invasive weeds or non-native plants.

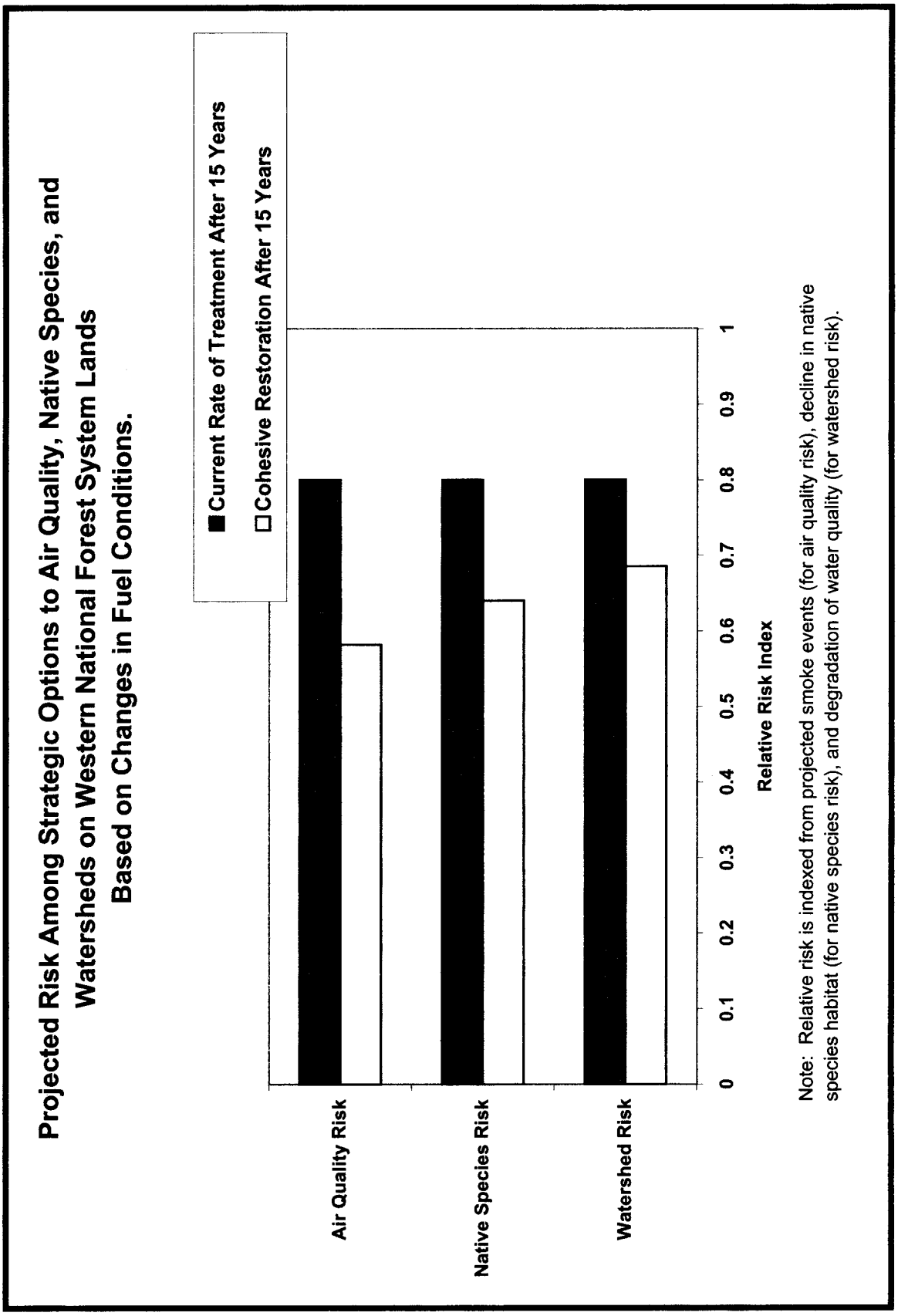
Projected Risk Among Strategic Options to Air Quality, Native Species, and Watersheds on Western National Forest System Lands
Based on Changes in Fuel Conditions.
Current Rate of Treatment After 15 Years
Cohesive Restoration After 15 Years
Air Quality Risk
Native Species Risk
Watershed Risk
0
0.1
0.2
0.3
0.4
0.5
0.6
0.7
0.8
0.9
1
Relative Risk Index
Note: Relative risk is indexed from projected smoke events (for air quality risk), decline in native species habitat (for native species risk), and degradation of water quality (for watershed risk).

Figure 12

On the 1999 Big Bar Complex, adverse effects were most commonly found where the fires burned at higher intensities. Impacts from the fires included:

- Prolonged exposure of local communities to unhealthy smoke concentrations.
- Increased soil erosion and stream course sedimentation.
- Loss of old-growth trees that provide significant wildlife habitat.
- Degradation and loss of fish habitat, especially in the New River's tributaries.

Public and Firefighter Safety

In fire-adapted forests adjacent to human communities, concerns for public health often compete with concerns for public and firefighter safety. Treatments that use prescribed burning raise health issues related to smoke. Although this strategy would employ mechanical thinning prior to prescribed burning in some areas to reduce particulate emissions, air quality will remain an important concern.

Current regulatory policies ''count'' prescribed fire emissions in measuring air quality, but do not include wildland fire emissions. Constraining prescribed fire use in fire-adapted ecosystems to ensure public health may inadvertently increase risks to human safety.

Stagnant atmospheric conditions during the late summer and early fall often inhibit smoke dispersal from wildland fires. Although these episodes are exempt from regulatory control, they exceed public health standards. In 1977 and 1987, southern Oregon and northern California experienced long-term, unhealthy smoke concentrations. The 1999 Big Bar Fire Complex in northern California and the 1994 Wenatchee, Washington wildland fires also caused prolonged exposure of local communities to unhealthy smoke levels.

In recent years, several tragedies have occurred as firefighters tried to control wildland fires threatening human developments. In 1991, the Dude wildland fire near Payson, Arizona killed six firefighters as they attempted to protect a rural subdivision. The South Canyon fire in 1994 resulted in the death of 14 firefighters who were suppressing a wildland fire that was approaching homes near Glenwood Springs, Colorado.

Among the general public, loss of life due to wildland fire is rare but not unknown. In 1991, 25 lives were lost, 150 people injured, and more than 3,000 structures were destroyed in a wildland fire in the hills near Oakland, California. On March 8, 2000, three motorists lost their lives and many more were injured in a multi-car pileup in Florida—the result of wildland fire smoke obscuring visibility on a highway.

While fuel treatments across the interior West have increased in the last few years, further increases are needed to protect communities, watershed health, species viability, and ecosystem resilience.

VI. Conclusions and Next Steps

''Moving toward sustainability is a two-part process. First, revising the uses of the ecosystem so that environmental values take an economically relevant place in policy and practice; second, incorporating the well-being of the ecosystem into the way management is conceived and implemented.''—Kai N. Lee, Compass and Gyroscope, 1993

The cohesive strategy outlined in this report is based on the premise that, within fire-adapted ecosystems, fire—at the right intensities, frequency, and season—is fundamentally essential for healthy, sustainable resources and the protection of nearby human communities. The strategy clarifies agency goals and objectives, establishes milestones and performance measures, and outlines an approach for setting restoration priorities.

The strategy directs treatments to high-risk areas, specifically, the wildland-urban interface, readily accessible municipal watersheds, and threatened and endangered species habitat. Implementing it will reduce the area in the interior West considered at highest risk of loss or damage. It prioritizes treatment of additional acres to prevent them from developing into high-risk conditions. It relies on a variety of treatments—including thinning, some harvest, other mechanical treatments and prescribed burning—to reduce fuels and the consequent risks of loss or long-lasting damage resulting from wildland fire.

The strategy provides an iterative approach, based on adaptive management and incremental steps. Actual treatment schedules will be developed using regional input based on Land and Resource Management Plans and other more recent assessments.

The strategy is responsive to regulatory responsibilities for clean air, clean water, and threatened and endangered species. Over the long term, the agency believes strategy implementation will better ensure ecosystem integrity for the benefit of future generations. The strategy does not attempt to treat all acres, nor does it eliminate all risks. While it does not aim to return forests and grasslands to pre-European settlement conditions—it does reduce risks by reducing over-accumulated fuels (Figure 13). The strategy will continue to evolve as the agency works with states, tribes, local communities and others.

The strategy also maintains that constituency support and collaboration with tribal, other federal, state, local agencies, and the public is an essential cornerstone for restoration work. It is consistent with the guiding principles of the Federal Wildland Fire Management Policy (approved by the Secretaries of Interior and Agriculture in 1995). In addition, it supports federal and state initiatives aimed at improving forest ecosystem health on public lands.

This strategy effectively reduces risk on a scale that makes a difference, but is potentially expensive and will take time and collaborative planning to implement. The costs, losses, and damages that will occur without this strategy are not always quantifiable or precisely known. When evaluated against recent trends and projections, however, wildland fire costs, loses, and damages, are expected to compound and exceed treatment costs—unless the rate of treatment is accelerated.

Large wildland fires will continue to occur. This cohesive strategy aims to reduce losses and damages from these wildland fires by concentrating treatments where human communities, watersheds, and species are at risk. Until restoration efforts are significantly expanded in fire-adapted ecosystems, the risks to watersheds, species, and people will continue to increase.

Note: Figure 13 is not printed in the **Federal Register**. It is available as indicated in the **ADDRESSES** section at the beginning of this notice.

Figure 13—The cohesive strategy outlined in this report aims to reduce severe insect, disease, and wildland fire risk.

Next Steps

This report provides a broad iterative approach to restore fire-adapted ecosystems and protect human values.

The coarse-scale assessments that establish the basis for the strategy will be refined as finer scale data become available to conduct forest-level planning. Implementation will occur consistent with Land and Resource Management Plan direction and other ongoing initiatives. More accurate assessments, integrated planning processes, public input, and collaboration with other agencies are all included in the work ahead.

Strategy actions to be addressed immediately:

- Refine coarse-scale assessments for wildland fuel risks.
- Develop regional implementation plans, integrating the status and risk

information included in the Western Watershed Initiative, Human Population Density Maps, and Species at Risk Analysis into forest planning efforts at national, regional, and local levels as applicable.

• Incorporate recommended adjustments to the Forest Service Government Performance and Results Act (GPRA) Strategic Plan (2000 revision).

• Identify funding for priority projects.

• Frame a research program to strengthen monitoring and evaluation during the strategy's implementation.

• Coordinate with states, tribes, and local communities for work in the urban-wildland interface to help in risk reduction and hazard mitigation.

• Continue efforts to develop markets and ideas for small-diameter material utilization.

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IX. Glossary

Uncharacteristic Wildfire Effects

An increase in wildfire size, severity and resistance to control, and the associated impact to people and property, compared to that which occurred in the native system.

Ecosystem Process

The actions or events that link organisms and their environment, such as predation, mutualism, successional development, nutrient cycling, carbon sequestration, primary productivity, and decay. Natural disturbance processes often occur with some periodicity (From Webster's dictionary, adapted to ecology.)

Ecosystem

The complex of a community of organisms and its environment functioning as an ecological unit in nature. (Webster's dictionary.)

Ecosystem Integrity

The completeness of an ecosystem that, at multiple geographic and temporal scales, maintains its characteristic diversity of biological and physical components, spatial patterns, structure, and functional processes within its approximate range of historic variability. These processes include: disturbance regimes, nutrient cycling, hydrologic functions, vegetation succession, and species adaptation and evolution. Ecosystems with integrity are resilient and capable of self-renewal in the presence of the cumulative effects of human and natural disturbances. (Proposed Rule, Section 219.36, 1999.)

Ecosystem Management u

The careful and skillful use of ecological, economic, social, and managerial principles in managing ecosystem integrity and desired conditions, uses, products, and services over the long term.

Fire-Adapted Ecosystem

An ecosystem with the ability to survive and regenerate in a fire-prone environment.

Fire Regime

A generalized description of the role fire plays in an ecosystem. It is characterized by fire frequency, seasonality, intensity, duration and scale (patch size), as well as regularity or variability. (Agee, as modified by Sexton.)

Fire Frequency (Fire Return Interval)

How often fire burns a given area; often expressed in terms of fire return intervals (*e.g.*, fire returns to a site every 5–15 years).

Interagency Wildland Fire Policy

The Federal Wildland Fire Management Policy and Program Review was chartered by the secretaries of the Interior and Agriculture to ensure that federal policies are uniform and programs are cooperative and cohesive. For the first time, one set of federal fire policies will enhance effective and

efficient operations across administrative boundaries to improve the capability to meet challenges posed by current wildland fire conditions.

The policy review team reexamined the role of fire in ecological processes and the costs associated with fighting fire. An interagency product has resulted in changes in terminology, funding, agency policy, and analysis of ecological processes.

Landscape

An area composed of interacting and inter-connected patterns of habitats (ecosystems) that are repeated because of the geology, landform, soils, climate, biota, and human influences throughout the area. Landscape structure is formed by patches (tree stands or sites), connections (corridors and linkages), and the matrix. Landscape function is based on disturbance events, successional development of landscape structure, and flows of energy and nutrients through the structure of the landscape. A landscape is composed of watersheds and smaller ecosystems. It is the building block of biotic provinces and regions.

Restoration

In the context of this report's cohesive strategy, restoration means the return of an ecosystem or habitat toward: its original structure, natural complement of species, and natural functions or ecological processes.

Sustainability

Meeting the needs of the current generation without compromising the ability of future generations to meet their needs. Ecological sustainability entails maintaining the composition, structure and processes of a system, as well as species diversity and ecological productivity. The core element of sustainability is that it is future-oriented. (Committee of Scientists Report, 1999.)

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XI. Appendices

Appendix A—The Coarse-Scale Assessment and Definition of Fire Regimes and Condition Classes

Fire Regime Descriptors

Five combinations of fire frequency, expressed as fire return interval and fire severity, are defined (Table 2) to create the map of Historic Natural Fire Regimes (Figure 14). Groups I and II include fire return intervals in the 0–35 year range. Group I includes ponderosa pine, other long-needle pine species, and dry-site Douglas fir. Group II includes the drier grassland types, tall grass prairie, and some chaparral ecosystems. Groups III and IV include fire return intervals in the 35–100+ year range; and Group V is the long-interval (infrequent), stand replacement fire regime.

TABLE 2.—THE FIVE HISTORIC NATURAL FIRE REGIME GROUPS

Fire Regime Group	Frequency (fire return interval)	Severity
I	0–35 years	Low severity.
II	0–35 years	Stand replacement severity.
III	35–100+ year	Mixed severity.
IV	35–100+ year	Stand replacement severity.
V	>200 years	Stand replacement severity.

Fire Regime Groups I and II

These first two fire regime groups occupy nearly all the lower elevation zones across the U.S. They have been most affected by the presence of human intervention and our analysis shows that these types demonstrate the most significant departure from historical levels. The departures are affected largely by housing development, agriculture, grazing, and logging. These areas are at greatest risk to loss of highly valued resources, commodity interests, and human health and safety. It is expected that these areas will receive primary focus of wildland management agencies in the future.

Current Condition Class Attributes

Three Condition Classes have been developed to categorize the *current* condition with respect to each of the five historic Fire Regime Groups. Current condition is defined in terms of departure from the historic fire regime, as determined by the number of missed fire return intervals—with respect to the historic fire return interval—and the current structure and composition of the system resulting from alterations to the disturbance regime. The relative risk of fire-caused losses of key components that define the system increases for each respectively higher numbered condition class, with little or no risk at the Class 1 level.

CONDITION CLASS [1] DESCRIPTIONS

Condition class	Fire regime	Example management options
Condition Class 1	Fire regimes are within an historical range and the risk of losing key ecosystem components is low. Vegetation attributes (species composition and structure) are intact and functioning within an historical range.	Where appropriate, these areas can be maintained within the historical fire regime by treatments such as fire use.
Condition Class 2	Fire regimes have been moderately altered from their historical range. The risk of losing key ecosystem components is moderate. Fire frequencies have departed from historical frequencies by one or more return intervals (either increased or decreased). This results in moderate changes to one or more of the following: fire size, intensity and severity, and landscape patterns. Vegetation attributes have been moderately altered from their historical range.	Where appropriate, these areas may need moderate levels of restoration treatments, such as fire use and hand or mechanical treatments, to be restored to the historical fire regime.

CONDITION CLASS [1] DESCRIPTIONS—Continued

Condition class	Fire regime	Example management options
Condition Class 3	Fire regimes have been significantly altered from their historical range. The risk of losing key ecosystem components is high. Fire frequencies have departed from historical frequencies by multiple return intervals This results in dramatic changes to one or more of the following: fire size, intensity, severity, and landscape patterns. Vegetation attributes have been significantly altered from their historical range.	Where appropriate, these areas may need high levels of restoration treatments, such as hand or mechanical treatments, before fire can be used to restore the historical fire regime.

[1] Current conditions are a function of the degree of departure from historical fire regimes resulting in alterations of key ecosystem components such as species composition, structural stage, stand age, and canopy closure. One or more of the following activities may have caused this departure: fire suppression, timber harvesting, grazing, introduction and establishment of exotic plant species, insects or disease (introduced or native), or other past management activities.

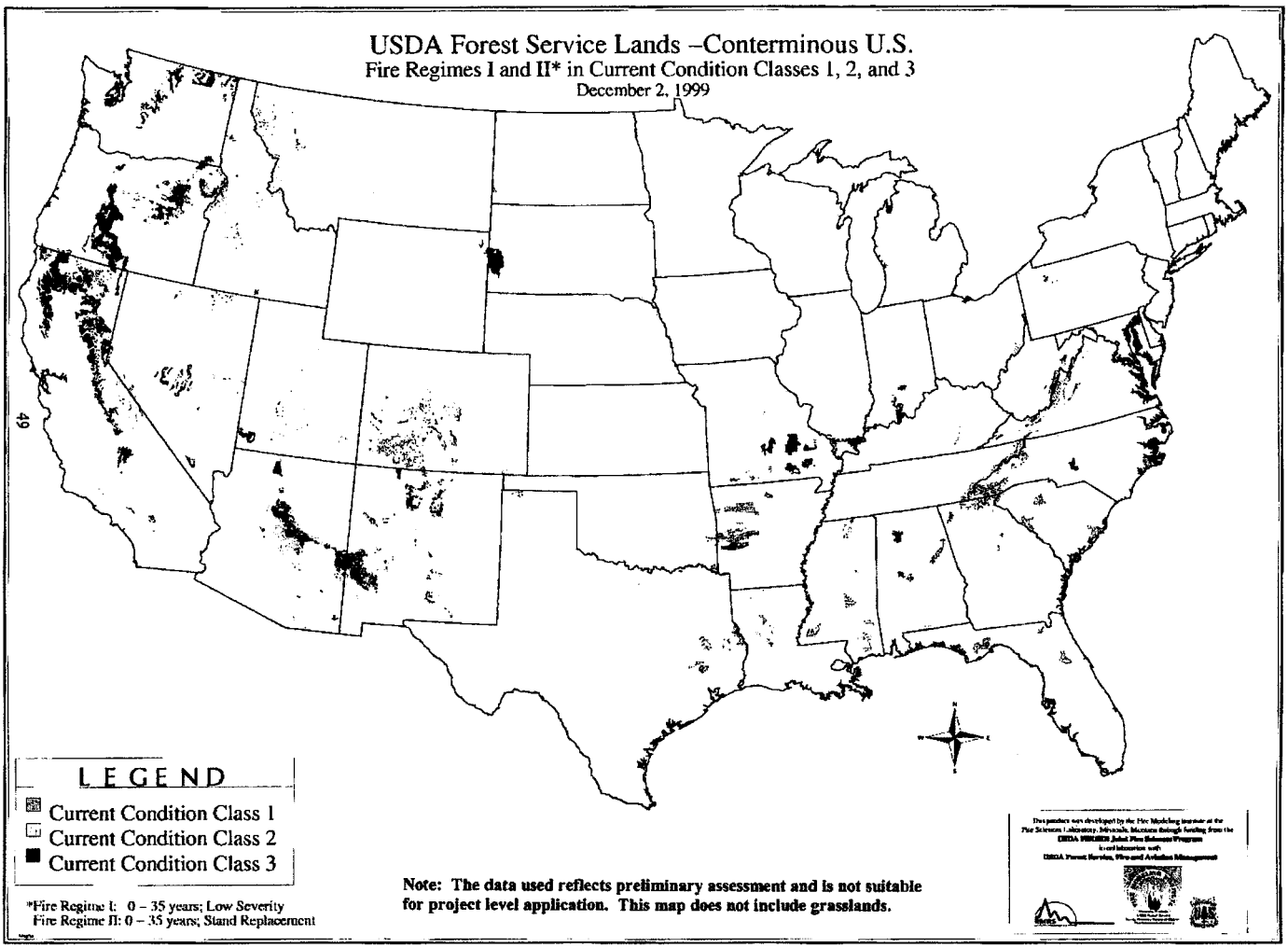

Figure 14—Forest Service Lands, Fire Regime Groups I and II

Appendix B—Recommended Adjustments to the Forest Service GPRA Strategic Plan

Objective 1.c—RESTORE ECOSYSTEM HEALTH AND RESILIENCE WITHIN THE CONTEXT OF NATURAL DISTURBANCE PROCESSES.

Strategies to Achieve the Objective

We will . . .

• Identify priority health restoration needs through national and regional environmental monitoring and ecological risk assessments. Including:

• social and economic factors and
• sensitive species habitats at risk.

• In regional, Land and Resource Management Plan, and landscape scale assessments, clearly identify values to be protected, relative risks, benefits, and costs of all treatment options for restoring fire-adapted ecosystems.

• Research ecosystems (composition, structure, and process), social and economic values at risk, and the role of disturbance process.

• Assess what fel treatment works most effectively to protect communities and restore fire-adaped ecosystems.

• Design and implement systematic methods for broad-scale and landscape scale assessments of the history, status, and trajectory of ecosystem conditions; values at risk; and management opportunities for maintaining and restoring ecosystem integrity.

• Apply the latest knowledge to develop and implement landscape scale protection and restoration projects that achieve landscape goals established in Forest Plans.

Measure

Trends in acres at extreme risk from fire, insects, diseases, and invasive species.

FY 2006 Milestones

• A 5% decrease in acres at extreme risk from insects and diseases.

• Restore and maintain fire-adapted ecosystems in fire regimes I and II. Reduce high risk areas by 25 percent.

• Acres infested with targeted invasive species remains unchanged or is diminished.

Key External Factors

Baseline data on acres at risk was collected in an inconsistent manner in the past. Well-defined methods of data collection and storage are being developed. Fires, insect and disease epidemics and other unplanned large natural disturbances can radically alter the landscape and rapidly change management strategies, priorities, and budget allocations.

Local jurisdictions regulate homebuilding. As development extends into wildlands, areas can experience higher intensity fires that increase risks to human life and property and contribute to the spread of invasive species.

Objective 3.e

Increase awareness among employees and constituents about the need for restoration and management for ecosystem sustainability.

Educate homeowners about FIREWISE programs and principles.

Strategies to Achieve the Objective

We will . . .

Develop corporate training module for conservation awareness, and ensure all employees participate in this training module.

Strengthen interagency conservation education efforts to emphasize the importance of watershed protection, species conservation, and management for long-term ecosystem integrity and resilience.

Design and implement conservation awareness products that facilitate understanding about natural disturbance processes, particularly fire, and the potential values at risk when fire regimes are altered.

Conduct FIREWISE workshops in all high-risk urban-interface communities adjacent to National Forests. Assist states in implementing the FIREWISE program nation-wide.

Measure

Increasing trend in employee and public awareness of relationships among natural disturbance processes, ecosystem integrity and social values.

All communities in high-risk urban-interface areas understand FIREWISE principles.

FY 2006 Milestone

• Complete corporate training module for conservation awareness and require all employees to participate in this training, by 2002.

• Develop an MOU with the Department of Interior to strengthen interagency conservation education to focus on the importance of watershed protection, species conservation, and management for ecosystem integrity and resilience, by 2002.

• Conduct FIREWISE workshops in all high-risk urban-interface areas adjacent to National Forest System lands.

Key External Factors

Cooperate with state, tribal, county, municipal, and local governments.

Appendix C—Reconciling Stewardship Objectives—Assessing Values at Risk

Considerable progress can be made in reconciling stewardship objectives by assessing values at risk at national, regional, and local scales. Emphasizing the agency's strategic objectives, a framework for assessing values at risk can be developed. Specifically, agency objectives for ecosystem health and public safety define national priorities for values to be protected. These objectives and their associated values are:

• Public safety (GPRA SP Objective 4b)
• Watershed protection (GPRA SP Objective 1a)
• Species conservation (GPRA SP Objective 1b)
• Ecosystem resilience (GPRA SP Objective 1c)

At a national level, we are working to integrate information on human development, watershed condition, species and ecosystems of concern, noxious weeds, insects and disease, roadless areas, and plant community/ecosystem conditions by fire regimes. This requires compilation of information on historic disturbance regimes, watershed condition information, and development of a watershed-at-risk map, and completion of the species-at-risk map. An integrated map of relative risk to these values will provide broad-scale context of the challenges for protecting people and sustaining ecosystems at the national level. A standard process for integrating and interpreting this information needs to be developed. National leadership will use this information to refine priorities for annual and long-term performance and accountability.

In assessing risk at the regional level, we need to integrate information including, but not limited to: human development, historic disturbance regimes, watershed condition, species and ecosystems of concern, invasive weeds, insects and disease, roadless areas, plant community/ecosystem conditions by fire regimes. This will require compilation of appropriate information at finer scales of resolution than that compiled for the national risk assessments. Based on regional assessments, priorities for landscape scale analyses and management action can be developed. On-the-ground treatment priorities are then identified by the goals, objectives, and strategies that are linked up through the agency to GPRA strategic goal for restoring and maintaining ecosystem health.

Appendix D—Brief Summary for Future Projections of Condition Classes and Risks

Introduction

The methods, results, and confidence in the future projections of Condition Classes and associated risks in section VI, ''Consequences of Deferral,'' are discussed in detail in a paper by Hann and Hilbruner (2000) titled ''Protecting People and Sustaining Resources—Assessment of Management Options for the Western U.S.'' This paper can be found on the www web site ''fs.fed.us/fire/fuelman.'' Methods for this analysis were based on adjustment and re-calibration for Forest Service lands in the Western U.S. of a vegetation and disturbance dynamics model developed by Hann and Bunnell (In Press) for the contiguous Lower 48 States.

This appendix provides a brief overview of methods and limitations of the modeling projections.

Methods

A landscape succession and disturbance network model was developed for the assessment of the cohesive strategy options in the Western U.S. (Hann and Hilbruner 2000) using the Vegetation Dynamics Development Tool (VDDT) (Beukema and Kurz 2000). The model that was developed used Condition Classes as states and incorporated probabilities for succession, unplanned disturbances (such as fire), and planned disturbances (such as mechanical and prescribed fire restoration).

The concepts of this type of model of multiple succession and disturbance pathways were first developed by Egler

(1954). These concepts were incorporated with other information into the development of conceptual succession and disturbance models by Noble and Slatyer (1977). Conceptual succession and disturbance models were combined with ecosystem specific information into computer models by Kessell and Fischer (1981) and Keane *et al.* (1989 to predict response over time of the interactions of vegetation succession and disturbance dynamics. As space and time pattern and process concepts developed in the field of landscape ecology, these models were further advanced (Forman and Godrun 1986, Turner *et al.* 1989). State and transition model concepts were further expanded with findings on multiple pathways and steady states in rangelands by Tausch *et al.* (1993).

The accumulation of this long history and wide variety of kinds of spatial and temporal landscape modeling were fully implemented to support an assessment of management implications that included characterization of the historical range and variation, as well as future outcomes of management option for the Interior Columbia Basin Ecosystem Management Project (ICBEMP) by Keane *et al.* (1996) and Hann *et al.* (1997 and 1998).

Dynamic relationships of basic landscape vegetation, disturbance, and hydrologic regimes were then linked with aquatic and terrestrial habitat and species population characteristics to characterize basic relationships and project future outcomes (Lee *et al.* 1997, Raphael *et al.* 1998, Wisdom *et al.* 2000). Similar linkages were developed with social and economic variables to characterize basic relationships and project future outcomes (Haynes and Horne 1997). Further developments have resulted in development of the Tool for Exploratory Landscape Scenario Analyses (TELSA) (Kurz *et al.* In Press) and the LAND and fire planning model which have been designed to support assessment of ecosystem status and risk variables, and prioritization of restoration opportunities to improve status and reduce risk (Hann and Caratti 2000).

Much of the understanding developed from the comprehensive scientific assessment and evaluation of management alternatives for the ICBEMP (Quigley *et al.* 1996, 1997, 1999) became the foundation for the modeling effort described briefly in this appendix and by Hann and Bunnell (In Press) for the Lower 48 states and Hann and Hilbruner (2000) for the western U.S. The modeling effort used the description of the present conditions for the western U.S. from Hardy *et al.* 2000.

Succession and disturbance probabilities were developed by determining average rates for the Fire Regimes and between each Condition Class. The model was calibrated for the historical range and variation (HRV) by repeating 10 runs per simulation (to get average, maximum, and minimum) until succession and disturbance probability combinations were found that could represent the fire regimes. The model was then calibrated from the late 1800s to the present by activating disturbances associated with post-Euro-American settlement, fire suppression, and management activities. The methods for this calibration were similar to those for calibration of HRV in that 10 runs per simulations were conducted until the projected conditions at the year 2000 and the trends of Condition Class and wildland fire graphs were similar to those of the published literature (Agee 1993, Hardy *et al.* 2000).

Two future options were calibrated using the combined understanding gained from the HRV and post-settlement calibration, with adjustments for future management option projections. The two future management options were: (1) Continuation of current management using the current levels of prescribed fire and fuel management combined with current levels of other activities (such as timber management, range improvement, wildlife habitat restoration, watershed restoration); and (2) implementation of the cohesive restoration strategy. In comparison to the HRV and post-settlement calibrations, these were relatively simple to calibrate, since the current levels of activities and the cohesive strategy level of activities were known entities.

Attributes for projections of loss of life and property, severe event degraded ecosystems, and relative risks of smoke/air quality, native species endangerment, and stream/watershed were developed using correlation of trends in landscape Condition Classes and assumptions similar to relationships found within ICBEMP (Quigley *et al.* 1999), but adjusted for conditions in the western U.S. (Elmore *et al.* 1994, Flatherer *et al.* 1994 and 1998, Hann and Caratti 2000, Hardy *et al.* 2000, Leenhouts 1998, Mangan 1999).

Loss of life and property was based on the relationship between firefighter fatalities and property losses correlated with amount of uncharacteristic wildland fire events. The amount of severe event degraded ecosystems was projected based on the correlation of uncharacteristic wildland fire events with high risk conditions. Relative risk of smoke/air quality was correlated with tons of particulates produced for both wildland fire and prescribed fire events. Native species endangerment patterns were correlated with the number of species of concern in the western U.S. and cumulative effect patterns of association with loss of habitat quality. Stream and watershed risk was correlated with effects of uncharacteristic wildland fires in cumulation with other effects. Many of the risks (such as land use or human disturbance on adjacent lands) that cause cumulative negative effects to native species, air quality, and streams and watersheds are not reduced by restoration on Forest Service lands. This was factored in to the model relationships.

Three key assumptions served as a basis for the Condition Class, disturbance, and associated attribute modeling:

Assumption 1—based on the landscape pattern and causes of fragmentation findings from ICBEMP, it was assumed that a step-down prioritization would occur that would identify priority watersheds to be restored. The watersheds would be selected based on high composition of Fire Regimes I and II and opportunities for maintenance of low risk or reduction of high risk conditions. However, once a priority watershed was selected, restoration activities would be designed to restore habitats and regimes across all Forest Service lands within the watershed, irrespective of the Condition Class and Fire Regime. This would achieve a landscape approach to restoration. This would avoid a fragmented outcome associated with the fragmented landscape pattern of Fire Regimes I and II that often occur in association with variation in elevation, terrain, road access, or history of land use within the watershed. In turn this would restore wildlife and fish habitats, and hydrologic and air regimes at a watershed scale, thus providing a positive outcome to those resources.

Assumption 2—based on aquatic native species strongholds and vulnerability of wildlife species, air quality and hydrologic regimes to the combination of land use, human activities, and proposed restoration; the step-down prioritization would result in an integrated design as described by Reiman *et al.* (2000). This would assure that vulnerable native species or ecosystems would not be selected for restoration activities that could cause a decline in these resources. This would also assure that watersheds selected for restoration would be restored in an integrated fashion, such that vegetation and fuel restoration activities would be paralleled with the necessary road, stream, and watershed restoration activities that would cumulatively result in a healthy watershed.

Assumption 3—the future projections assumed a minor level of continuation of increasing drought and warming temperatures in both management options. However, for the future projections of the cohesive strategy it was assumed that a landscape approach to restoration would occur. This would result in a re-patterning of the fuels and vegetation such that the present contiguous high risk fuel bodies would be restored to a pattern somewhat similar to that of HRV, thus resulting in lower risk of uncharacteristic wildland fire event continuity or continuation of uncharacteristic succession/disturbance momentum. For the cohesive strategy, this assumption resulted in the slowing of succession rates to higher risk Condition Classes and lowering of probabilities of large uncharacteristic wildland fire events.

Limitations of Modeling

There are considerable limitations to this type of general modeling at a scale that accounts for all Forest Service lands in the western U.S. Modeling could be much more precise with more detailed pixel modeling using refined stratification of succession, disturbance, and attribute parameters, such as accomplished by Keane *et al.* (1996) with the Columbia River Basin Succession Model. However, given experience with validation of this and other detailed spatial and temporal geographic information systems, it is unlikely that the relative differences between the outcomes of the two options would change substantially with more detailed modeling. This appears to be particularly true at the broad scale of Forest Service lands in the western U.S.

One key caution is emphasized relative to use of the projected outcomes:

Caution—the strength of this type of modeling is in reliance on relative differences and not on the absolute. The absolute value of the area for a Condition Class, disturbance effect, or associated

attribute class does not have high confidence at this scale. However, the relative difference (percent difference) between management options for the Condition Class, disturbance effect, or associated attribute class has fairly high confidence. This is because the confidence in relative differences between management options for the same attribute class increases with increasing size of summary area, while the confidence in the absolute area of an attribute class decreases with increasing size of summary area (Hann *et al.* 1997).

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Federal Register

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Part III

Department of Agriculture

Forest Service

36 CFR Parts 217 and 219
National Forest System Land Resource Management Planning; Final Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 217 and 219

RIN 0596–AB20

National Forest System Land and Resource Management Planning

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule describes the framework for National Forest System land and natural resource planning; reaffirms sustainability as the overall goal for National Forest System planning and management; establishes requirements for the implementation, monitoring, evaluation, amendment, and revision of land and resource management plans; and guides the selection and implementation of site-specific actions. The intended effects are to simplify, clarify, and otherwise improve the planning process; to reduce burdensome and costly procedural requirements; to strengthen and clarify the role of science in planning, and to strengthen collaborative relationships with the public and other government entities.

EFFECTIVE DATE: This rule is effective November 9, 2000.

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SUPPLEMENTARY INFORMATION: The following outline displays the contents of the preamble to this final regulation.

General Background

The 1982 Planning Rule

Summary of Public Comment

Today's Final Rule

Response to General Comments

Section by Section Response to Public Comments

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Proposed section 219.2 Goals and principles for planning.

The Framework for Planning

Proposed section 219.3 Overview.
Proposed section 219.4 Topics of general interest or concern.
Proposed section 219.5 Information development and interpretation.
Proposed section 219.6 Proposed actions.
Proposed section 219.7 Plan decisions that guide future actions.
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Proposed section 219.9 Revision.
Proposed section 219.10 Site-specific decisions and authorized uses of land.
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Collaborative Planning for Sustainability

Proposed section 219.12 Collaboration and cooperatively developed landscape goals.
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Proposed section 219.16 Relationships with interested individuals and organizations.
Proposed section 219.17 Interaction with private landowners.
Proposed section 219.18 Role of advisory groups and committees.

Ecological, Social, and Economic Sustainability

Proposed section 219.19 Ecological, social, and economic sustainability.
Proposed section 219.20 Ecological sustainability.
Proposed section 219.21 Social and economic sustainability.

The Contribution of Science

Proposed section 219.22 The role of assessments, analyses, and monitoring.
Proposed section 219.23 The participation of scientists in planning.
Proposed section 219.24 Science consistency evaluations.
Proposed section 219.25 Science advisory boards.

Special Considerations

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Proposed section 219.27 Special designations.
Proposed section 219.28 Determination of land suitable for timber removal.
Proposed section 219.29 Limitation on timber removal.

Planning Documentation

Proposed section 219.30 Land and resource management plan documentation.
Proposed section 219.31 Maintenance of the plan and planning records.

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Proposed section 219.32 Objections to amendments or revisions.
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Proposed section 219.34 Applicability.
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General Background

The Forest Service is responsible for managing the lands and resources of the National Forest System, which includes 192 million acres of land in 42 states, the Virgin Islands, and Puerto Rico. The system is composed of 155 national forests, 20 national grasslands, and various other lands under the jurisdiction of the Secretary of Agriculture (the Secretary).

On October 5, 1999, the Forest Service published a proposed rule (64 FR 54074) to revise the Land and Resource Management Planning rule at 36 CFR part 219. The existing planning rule was adopted on September 30, 1982 (47 FR 43026) and amended in part on June 24, 1983, (48 FR 29122), and September 7, 1983 (48 FR 40383). The rule is required by the Forest and Rangeland Renewable Resources Planning Act of 1974 (88 Stat. 476 *et seq.*) as amended by the National Forest Management Act of 1976, (90 Stat. 2949 *et seq.*; 16 U.S.C. 1601–1614) (hereafter, NFMA).

This final rule will help the Forest Service improve forest planning and on-the-ground management and enable the agency to improve the long-term health of the national forests and grasslands while better meeting the needs of the American people. Consistent with the statutory mission of the Forest Service and applicable federal environmental laws, the final rule emphasizes four key concepts. First, it affirms sustainability as the overall goal for national forest and grassland management in accordance with the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528 *et seq.*) (hereafter, MUSYA). Second, it requires extensive cooperation and collaboration with the public and other private and public entities. Third, it integrates science more effectively into the planning and management of national forests and grasslands. Finally, the rule eliminates burdensome analytical requirements

that were designed to govern the initial development of land and resource management plans and puts into place a new planning framework that addresses problems, issues, and opportunities identified through collaboration with the public, through monitoring or other scientific analyses, or by other means.

The final rule is grounded in the laws that guide National Forest System management. It also provides for the incorporation of significant new scientific information and other lessons the agency has learned since it began implementing NFMA planning regulations in 1982. Indeed, much has been learned in developing, implementing, and litigating the original national forest and grassland plans and the numerous plan amendments and revisions that have been completed during the past two decades.

Congress created the National Forest System ''to improve and protect'' federal forests (Act of June 4, 1897, ch. 2, 30 Stat. 34–36). The Forest Service is vested with broad authority to make rules ''to regulate [the Forests'] occupancy and use and to preserve the forests therein from destruction'' 16 U.S.C. 551.

Sustainability of these lands and resources is the essence of Forest Service land and natural resource management from the very beginnings of the National Forest System. Over a century ago, Congress authorized the President to reserve ''public land bearing forests * * * whether of commercial value or not, as public reservations,'' Act of March 3, 1891, ch. 561, 26 Stat. 1095, 1103, to protect them from unsustainable uses that had damaged watersheds. Six years later in the Organic Administration Act of 1897, Congress provided further direction and management authority for these forest reserves and reaffirmed its intent to provide for sustainable protection and use of these forest reserves. That law provided for the establishment of forest reserves ''to improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States * * *'' 16 U.S.C. 475.

In the MUSYA, Congress again affirmed the application of sustainability to the broad range of resources over which the Forest Service has responsibility. MUSYA confirms the Forest Service's authority to manage the national forests and grasslands ''for outdoor recreation, range, timber, watershed, and wildlife and fish purposes'' (16 U.S.C. § 528), and does so without limiting the Forest Service's broad discretion in determining the appropriate resource emphasis *or* levels of use of the lands of each national forest and grassland.

Shortly after the passage of MUSYA, the public was becoming increasingly concerned about environmental decline throughout the United States. Congress responded to this concern by enacting several laws directed toward protecting or improving the natural environment, conserving natural resources to meet the needs of the American people in perpetuity, and providing for greater public involvement in agency decisionmaking. Specifically regarding forest land and resource management, Congress enacted the NFMA (16 U.S.C. 1660(6)), which requires the Forest Service to manage the National Forest System lands according to land and resource management plans that provide for multiple-uses and sustained-yield in accordance with MUSYA (16 U.S.C. 1604(e) and (g)(1)). In developing and maintaining these plans, NFMA calls for ''integrated consideration of physical, biological, economic and other sciences.'' (16 U.S.C. 1604(b)). As Sen. Humphrey stated, in explaining the significance of the NFMA: ''The days have ended when the forest may be viewed only as trees and trees viewed only as timber. The soil and the water, the grasses and the shrubs, the fish and the wildlife, and the beauty that is the forest must become integral parts of resource managers' thinking and actions'' (122 Cong Rec. 5618–19 (1976)). Similarly, federal courts have recognized that NFMA and related statutes represent a congressional delegation of broad authority that allows the Forest Service to address issues of sustainability using an integrated ecological and socio-economic framework. *See, e.g., Seattle Audubon Society* v. *Lyons,* 871 F. Supp. 1291 (W.D. Wash. 1994) aff'd 80 F.3d 1401 (9th Cir. 1996) * * * ''Given the current condition of the forests, there is no way the agencies could comply with the environmental laws without planning on an ecosystem basis.''

NFMA also requires the Secretary to promulgate regulations ''that set out the process for the development and revision of the land management plans'' for units of the National Forest System, and specifies certain procedures, guidelines and goals that should be discussed in the regulations (16 U.S.C. 1604). NFMA expanded on MUSYA and the Endangered Species Act of 1973 (ESA) authorities by including in the requirements for land use planning broad discretion to provide for ''diversity of plant and animal communities'' and ''to preserve the diversity of tree species similar to that existing in the region controlled by the plan'' (16 U.S.C. 1604(g)(3)(B)). Additionally, in response to public concerns regarding the sustainability of certain silvicultural techniques, Congress included several limitations and analytical requirements for timber harvest (16 U.S.C. 1604(g)(3)(D) through (F), (k), and (m)). NFMA also requires the Secretary to appoint a ''committee of scientists'' to assist in carrying out the task of developing and promulgating regulations in accordance with the purposes of the statute (16 U.S.C. 1604(h)).

Congress enacted the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), ''to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man, [and] enrich the understanding of the ecological systems and natural resources important to the Nation'' (42 U.S.C. 4321). Under NEPA, all Forest Service proposals for major federal actions significantly affecting the quality of the human environment must include detailed statements of the environmental effects and alternatives to proposals (42 U.S.C. 4332(C)). Environmental effects include ecological effects ''such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems'' (40 CFR 1508.8). NEPA also requires the Forest Service to ''initiate and utilize ecological information in the planning and development of resource-oriented projects'' (42 U.S.C. 4332(H)).

In addition to NEPA, the ESA also bounds the otherwise broad discretion that the Forest Service has over land and resource management. One of the purposes of the ESA is ''to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved . . .'' (16 U.S.C. 1531(b)). The ESA requires federal agencies such as the Forest Service to ''utilize their authorities in furtherance of the purposes of this [Act] by carrying out programs for the conservation of endangered species and threatened species'' in consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (16 U.S.C. 1536(a)(1)).

The 1982 Planning Rule

In accordance with NFMA's direction to develop regulations regarding the development, maintenance, and revision of land and resource management plans for units of the

National Forest System, the Secretary promulgated a rule for implementation of the planning requirements on September 30, 1982 (47 FR 43026), as amended (48 FR 29122, June 24, 1983), and (48 FR 40383, Sep. 7, 1983).[1] The rule is codified at 36 CFR part 219.

Many things have changed since the publication of the 1982 rule. Ideas and concepts, such as sustainability and ecosystem management have become more adequately understood and increasingly more important as human uses of natural resources has grown. The Forest Service has also gained a great deal of experience developing, implementing, amending, and revising the existing 127 land and resource management plans under the rule. The Forest Service is now in the process of revising many of these plans in accordance with NFMA's requirement that plans be revised at least once every 15 years. The agency has also developed innovative new planning tools, such as geographical information systems and is engaged in increased collaboration with the public and other federal agencies, tribes, state government, and other interested groups or persons, and uses independent scientific review more frequently.

The concept of sustainability has become an internationally recognized objective for land and resource stewardship. In 1987, the Brundtland Commission Report (The World Commission on Environment and Development) articulated in ''Our Common Future'' the need for intergenerational equity in natural resource management. The Commission defined sustainability as meeting the needs of the present without compromising the ability of future generations to meet their own needs. During the last twenty years, the world has increasingly come to recognize that the functioning of ecological systems is a necessary prerequisite for strong productive economies, enduring human communities, and the values people seek from wildlands.

Similarly, the Forest Service and scientific community have developed the concepts of ecosystem management and adaptive management. Scientific advances and improved ecological understanding support an approach under which forests and grasslands are managed as ecosystems rather than focusing solely on single species or commodity output. Indeed, ecosystem management places greater emphasis on assessing and managing broad landscapes and sustaining ecological processes. Ecosystem management focuses on the cumulative effects of activities over time and over larger parts of the landscape. Planning and management under ecosystem management also acknowledge the dynamic nature of ecological systems, the significance of natural processes, and the uncertainty and inherent variability of natural systems. Ecosystem management calls for more effective monitoring of management actions and their effects to facilitate adaptive management, which encourages changes in management emphasis and direction as new, scientific information is developed. In accord with ecosystem management, regional ecosystem assessments have become the foundation for more comprehensive planning, sometimes involving multiple forests and other public land management units. The Northwest Forest Plan, for example, affects 17 national forests and 6 BLM districts in a three-state region. The Interior Columbia Basin Ecosystem Project encompasses 25 percent of the entire National Forest System and ten percent of the public lands administered by the BLM nationwide.

In the last 20 years, the number of federal, state and local agencies, Tribes, members of the public, and interested groups wanting to be involved in planning decisions and share stewardship responsibilities has skyrocketed. In many cases, Forest Service personnel have been able to learn significant information, create new understanding, build trust, obtain new resources for implementation and monitoring, and diffuse potential conflicts by engaging these parties more effectively in the planning process through collaboration. While collaborative approaches do not end conflict or necessarily result in consensus, by engaging people and identifying key issues early in the process, they enable the Forest Service to make better decisions and to manage conflict more effectively. Similarly, the Forest Service has learned that independent scientific and public review can greatly enhance the credibility of planning and validate the soundness of stewardship decisions and the reality of achievements.

Taken together, ecosystem management, scientific reviews, and collaboration enable the Forest Service to identify key scientific and public issues and to target its limited resources on trying to resolve those issues at the most appropriate time and geographic scale. Based on these changes in the state of scientific and technical knowledge, the Forest Service's extensive experience, and a series of systematic reviews, the Forest Service has concluded that 36 CFR part 219 must be revised in order to better reflect current knowledge and practices and to better meet the conservation challenges of the future. Indeed, while the 1982 planning rule was appropriate for developing the first round of plans from scratch, it is no longer well suited for implementing the NFMA or responding to the ecological, social, and economic issues currently facing the national forests and grasslands.

The Forest Service has undertaken two systematic reviews of the planning process mandated by the 1982 rules. The first began in 1989, when it conducted a comprehensive review of its land management planning process in cooperation with the Conservation Foundation and Purdue University's Department of Forestry and Natural Resources. The results of this review are documented in a summary report, *Synthesis of the Critique of Land Management Planning, Volume One* and ten accompanying detailed reports. Based in part on this review, the Forest Service published an Advance Notice of Proposed Rulemaking (56 FR 6508, Feb. 15, 1991) regarding possible revisions to the 1982 planning rule. The agency conducted four public meetings to explain and discuss ideas for revising the planning rule; and received comments from over 600 individuals and groups. These comments were used in the development of a proposed rule published on April 13, 1995 (60 FR 18886). However, due to comments received on the 1995 proposed rule and lessons learned from experiences in developing the Northwest Forest Plan, regional assessments, and other regional ecosystem management strategies, the Secretary elected not to proceed with that proposal.

The second systematic review was undertaken in December 1997, when the Secretary of Agriculture convened a 13-member Committee of Scientists to review the Forest Service planning process and offer recommendations for improvements within the statutory mission of the Forest Service and the established framework of environmental laws. The members of this Committee of Scientists represented a diversity of views, backgrounds, and academic expertise. The Committee's charter was to ''provide scientific and technical

[1] The Secretary had initially promulgated these rules in 1979, but no forest plans were ever completed under the 1979 rules. Soon after a new Administration took office, the USDA Assistant Secretary for Natural Resources and Environment withdrew these planning rules and sought to revise them. Such controversy was generated as a result, that the Committee of Scientists involved in the development of the 1979 rules was reconvened and enlisted to work on what eventually became the 1982 planning rules.

advice to the Secretary of Agriculture and the Chief of the Forest Service on improvements that can be made in the National Forest System Land and Resource Management Planning Process and to address such topics as how to consider the following in land and resource management plans: biological diversity, use of ecosystem assessments in land and resource management planning, spatial and temporal scales for planning, public participation processes, sustainable forestry, interdisciplinary analysis, and any other issues that the Committee identifies that should be addressed in revised planning regulations.'' The Committee was also asked to recommend improvements in Forest Service coordination with other federal, state, and local agencies, and tribal governments while recognizing the unique roles and responsibilities of each agency in the planning process.

The Committee held more than 20 publicly noticed meetings and teleconferences across the country and heard from Forest Service employees, representatives of tribes, state and local governments and other federal agencies, members of the public, former Chiefs of the Forest Service, and members of the original Committee of Scientists regarding their concerns and ideas about the current planning process and the current management of national forests and grasslands.

Following these meetings, the Committee of Scientists issued a final report on March 15, 1999, entitled *Sustaining the People's Lands*. The Committee found that, through careful management, National Forest System lands can continue to provide many diverse benefits to the American people in perpetuity. These benefits include clean air and water, productive soils, biological diversity, a wide variety of products and services, employment, community development opportunities, and recreation. The Committee recognized that many Forest Service managers have developed innovative ways to commingle science and collaborative public processes to improve land management decisions, and that these innovative strategies provided a good starting point for developing a more integrated, long-lasting, and flexible planning framework. The Committee concluded that the Forest Service can improve its planning and decisionmaking by relying on the concepts and principles of sustainable natural resource stewardship; by applying the best available scientific knowledge to management choices; and by effectively collaborating with a broad array of citizens, other public servants, and governmental and private entities. Accordingly, the Committee recommended a planning framework that would provide flexibility in dealing with a multitude of resource issues at various scales across the landscape and would require managers to integrate public collaboration and science to identify desirable outcomes and promote sustainable management. It also recommended use of adaptive practices, monitoring, performance measures, and budgeting strategies.

Based on scientific advances in forestry, forest management and range science, the 1990 Critique of land and resource management planning and the Committee of Scientists' findings and recommendations as contained in its 1999 report, the various laws and regulations that guide National Forest System planning and management, and over 17 years of experience in developing and implementing the existing 127 land and resource management plans, a team of Forest Service employees from national, regional, and local offices, aided by an interagency steering committee, prepared the October 5, 1999, proposed rule to comprehensively revise the land and resource management planning regulation at 36 CFR part 219 (60 FR 18886 Oct. 5, 1999).

Summary of Public Comment

In addition to the meetings held by the Committee of Scientists, the Forest Service conducted more than twenty public town meetings to solicit input on the proposed rule. At many of the locations, the Forest Service also conducted meetings with representatives from Tribes, state and local governments, and other federal agencies. The agency held town meetings in both rural and urban communities across the country, at the following locations:

St. Louis, MO—Tuesday, October 26, 1999
Hanover, NH—Tuesday, October 26, 1999
Duluth, MN—Thursday, October 28, 1999
Olympia, WA—Tuesday, November 2, 1999
Boise, ID—Monday, November 1, 1999
Juneau, AK—Thursday, November 4, 1999
Salem, OR—Thursday, November 4, 1999
Casper, WY—Tuesday, November 9, 1999
Reno, NV—Wednesday, November 10, 1999
Los Angeles, CA—Saturday, November 13, 1999
Denver, CO—Saturday, November 13, 1999
Little Rock, AR—Tuesday, November 16, 1999
Bozeman, MT—Tuesday, November 16, 1999
Jackson, MS—Thursday, November 18, 1999
Missoula, MT—Thursday, November 18, 1999
Coeur d'Alene, ID—Saturday, November 20, 1999
Montrose, CO—Tuesday, November 30, 1999
Grayling, MI—Wednesday, December 1, 1999
Albuquerque, NM—Thursday, December 2, 1999
Asheville, NC—Saturday, December 4, 1999
Salt Lake, UT—Tuesday, December 7, 1999
Sacramento, CA—Thursday, December 9, 1999
Phoenix, AZ—Thursday, December 9, 1999

Approximately 1339 people attended the public meetings. The public comment period on the proposed rule closed on January 3, 2000, but was subsequently extended to February 10, 2000. Some 10,489 persons or entities submitted written comments on the proposed rule. The respondents consisted of a wide array of individuals, businesses, government agencies, and organizations. Most respondents agreed that the planning regulations needed to be revised and supported the objectives that the Forest Service proposed, but provided numerous comments on how to better achieve those objectives.

Today's Final Rule

Today's final rule will help the Forest Service improve forest planning and on-the-ground management and enable the agency to improve the long-term health of the national forests and grasslands while better meeting the needs of the American people. The final rule affirms ecological, social, and economic sustainability as the overall goal for managing the National Forest System lands and makes the maintenance and restoration of ecological sustainability a first priority for management of the national forests and grasslands so these lands can contribute to economic and social sustainability by providing a sustainable flow of uses, values, products, and services.

The final rule published here today also is designed to facilitate greater public collaboration in all phases of the planning process. The rule expands on existing requirements for collaboration to expand management choices, create new understanding, build trust, obtain

new resources for implementation and monitoring, manage conflict more productively, and more fully informed decisionmaking to ensure the long-term sustainability of the multiple resources of national forests and grasslands. The rule encourages land managers to more actively engage the American people, other federal, state and local agencies, Tribes, and interested groups in the planning and management of the national forests and grasslands. In collaborative settings that provide opportunities for early, open, and frequent public involvement, responsible Forest Service officials will play many roles, including serving as process conveners, facilitators, leaders, participants, and decision makers, as appropriate.

The final rule creates opportunities for people, communities, and organizations to work together in the identification of key issues, discussions of opportunities for contributing to sustainability, and development and promotion of landscape goals. Indeed, under the rule, improvements to management practices would be made based upon cooperatively developed landscape goals and other issues which can emerge from a variety of sources such as collaboration, monitoring, evaluation, broad-scale assessments, local analyses, new laws and policies, or simply from discussions among interested persons. The proposed regulation would encourage the public to be involved in identifying concerns and problems, considering available information, assessing current conditions, and identifying potential solutions even before a proposal for agency action is written. This early public involvement would make more information available to the public, enhance its ability to participate in the process, and lead to better communication about expectations and outcomes. To further enhance the collaborative process, advisory committees could be used to assist the responsible official in determining whether there is a reasonable basis for proposing an action to address an issue.

Additionally, the final rule would replace the post-decision appeal process with a pre-decisional objection process. The objection process would only apply to forest and grassland plan revisions and amendments. Under a pre-decisional objection process, a person could object to a pending decision before the agency makes a final decision, a process very similar to the protest procedures now in effect in the Bureau of Land Management. The intent is to provide the reviewing official with an opportunity to work more closely with the responsible official and those filing objections to resolve the objections before a decision is made. A pre-decisional objection process also will enhance interagency collaboration by standardizing objection procedures and will provide incentives to work out substantive differences rather than focus on procedural errors.

The emphasis on collaboration is consistent with direction provided in NFMA and other statutes guiding land and resource management and in concert with the underlying philosophy of national forest management. As reflected in guidance provided by Gifford Pinchot in the first Forest Service administrative manual, Uses of the National Forests (1907), ''National Forests are made for and owned by the people. They should also be managed by the people * * * If National Forests are going to accomplish anything worthwhile the people must know all about them and must take a very active part in their management. What the people as a whole want, will be done. To do it, it is necessary that the people carefully consider and plainly state just what they want and then take a very active part in seeing that they get it.''

Another key element in the final rule is greater emphasis on the use of science in planning. The final rule requires the use of the best available science to give the Forest Service and the people, communities, and organizations involved in the planning process sound information on which to make recommendations about the resource conditions and outcomes they desire. The final rule incorporates science in the planning and decisionmaking process in a number of ways.

First, the rule recognizes the lessons learned in recent years about developing and analyzing information at the regional ecosystem level. Regional ecosystem assessments have proven to be an extremely valuable and efficient means of understanding the scientific, ecological, social, and economic issues and trends affecting national forests and grasslands and generating baseline data for use in planning and decisionmaking.

Second, consistent with the 1990 Critique and the Committee of Scientists report, the final rule emphasizes monitoring and evaluation of resource conditions and trends over time so that management can be adapted as conditions change. Specifically, the required monitoring and evaluation will assist in determining if desired outcomes are being achieved and how to adapt if they are not. This emphasis is in keeping with NFMA's direction to ensure research on evaluation of the effects of each management system, based on continuous monitoring and assessment in the field, to the end that it will not produce substantial and permanent impairment of the productivity of the land (16 U.S.C. 1604(g)(3)(C)). As noted by the Committee of Scientists, ''Monitoring is a key component of planning * * * Monitoring procedures need to be incorporated into planning procedures and should be designed to be part of the information used to inform decisions. Adaptive management and learning are not possible without effective monitoring of actual consequences from management activities.''

Third, the final rule provides for the establishment of science advisory boards to improve decision makers' and planners' access to current scientific information and analysis. It also provides for an independent scientific review of the effectiveness of land management plans in meeting the goal of sustainability during the revision process, and, when appropriate, science consistency evaluations to determine whether the planning process is consistent with the best available science. As the Committee of Scientists observed, ''To ensure public trust and support innovation, scientific and technical review processes need to become essential elements of management and stewardship * * * The more that conservation strategies and management actions are based on scientific findings and analysis, the greater the need for an ongoing process to ensure that the most current and complete scientific and technical knowledge is used.''

Fourth, the proposed rule affirms the Forest Service's commitment to the viability of all species in accordance with the NFMA requirement to provide for the diversity of plant and animal communities and recognizes the unique contributions national forest and grassland stewardship can make in maintaining species viability. At the same time, the rule recognizes the limits of our scientific understanding and financial and technical capability to conduct viability assessments. To assess the viability of appropriate species of flora and fauna, the rule calls for the use of focal species as indicators of ecological conditions and the best available science and information, including professional opinion and the principles of conservation biology.

Finally, the final rule provides a planning framework that facilitates the identification and responsive resolution to emerging problems. The final rule simplifies required planning steps to enable responsible officials to more readily address emerging issues than is

possible under the 1982 rule. For example, the final rule would clarify that, where appropriate, multiple planning activities of one or more national forests or grasslands can be combined along administrative boundaries. Additionally, current requirements for detailed analyses, such as those required for benchmark analyses, would be streamlined or eliminated. Moreover, planning would be done at the most appropriate scale in order to address key issues, and forest and grassland plans and projects would use the same planning framework. The final rule also allows the steps in the planning framework to be coordinated with the scoping requirements under the Forest Service NEPA procedures when appropriate. This will reduce duplication in the preparation of environmental documents associated with management of the National Forest System.

In summary, the final rule will enable the Forest Service to make better decisions about the National Forest System and guide Forest Service planning and management clearly and effectively well into the 21st Century. Grounded in law and experience, the final rule affirms sustainability as the overall goal for national forest and grassland management, requires greater cooperation and collaboration with the public and other private and public entities, and more effectively integrates science into Forest Service planning and management. At the same time, the rule also includes the essential features of National Forest System planning that Chief Gifford Pinchot established almost a century ago and that the Forest Service has used throughout the history of the agency. These features include detailed inventories, monitoring of forest conditions, determination of sustainable levels of uses, and exclusion of uses, where necessary, to protect watershed and other resources (1906 Use Book).

Response to General Comments

Many of the comments received did not address specific sections of the proposed rule, but were more general in nature. These comments and responses are summarized below.

Comment: Committee of Scientists Report. A common concern involved the incorporation of the Committee of Scientists' report findings into the proposed planning rule. Some people felt recommendations in the Committee of Scientists report should lay the groundwork for management and guide future management actions. Others, however, believed this report should be subject to peer review by other qualified science professionals. Additionally, some people proposed that the Committee of Scientists' report be open to public scrutiny, requiring public meetings and a public comment period for review of the report. Other respondents suggested that the proposed planning rule include the names and qualifications of the Committee of Scientists' members.

Response: The Committee of Scientists, established by the Secretary of Agriculture under the Federal Advisory Committee Act, represented a spectrum of disciplines and views related to planning for the National Forest System. While formal, scientific peer review of the recommendations of the Committee was not undertaken, the process used in the development of the Committee's report provided for external review and comment. In developing its recommendations, the Committee utilized a very open, deliberative process which included open public meetings, an internet web site accessible to the public which contained its working drafts and related papers, and public meetings. The names and qualifications of the members of the Committee are listed in the report and available on the Committee's web site (www.cof.orst.edu/org/scicomm).

Comment: National Forest Management Act requirements. Many reviewers said that the proposed rule did not clearly identify how it complied with NFMA requirements. These reviewers felt that the intent of NFMA can be realized without revising the current land and resource management planning process.

Response: The preamble of the proposed rule described how the planning rule complied with specific sections of NFMA and reasons for revising the existing planning regulations.

Comment: Need for revising the existing rule. According to several respondents, the Forest Service should demonstrate the need for revising the existing planning rule. In particular, some believed that the length of time the existing rule has been in effect is not justification for implementing a new rule. Others argued that the existing system already fulfills NFMA and NEPA requirements and that some individual forest plans are very effective, and there is no reason for changing the process. Several people argued that the proposed rule does not address deficiencies in the existing rule. The Forest Service should document the inadequacies inherent in the existing planning process. Some commenters asserted that the existing rule should be improved before a new planning rule is implemented.

Response: This comment has previously been addressed in the preamble of the proposed rule and in this final rule document.

Comment: Public trust and credibility. Many respondents expressed concerns regarding the purpose of the proposed planning rule. Some felt the primary objective of the planning process was to establish public trust and credibility. They believed that the trust in Forest Service structure and management was waning and recommended that the agency take steps to rectify this. In addition, the Forest Service should assume the leadership role in the effort to ensure healthy forests.

Response: The Department of Agriculture (Department) is concerned with the lack of trust expressed about the Forest Service by the respondents. The revised planning process is designed to encourage effective communication and cooperation among diverse national forest and grassland users. The Forest Service will continue to participate with others indeveloping management strategies to conserve healthy forests and grasslands.

Comment: Discretionary authority. Some reviewers were concerned that the proposed regulations would broaden the discretionary power of Forest Service officials. These individuals asserted that the current discretionary authority of the Forest Service has resulted in increased litigation. They were concerned that further increase in authority could result in additional appeals and lawsuits.

Response: The Department does not agree with the comment that increased discretion creates increased litigation. Increased discretionary authority may provide the needed flexibility to craft appropriate solutions to complex natural resource issues acceptable to a wide variety of interests. It has been the experience of the Forest Service and others that inflexible policies are often the genesis of misunderstandings and eventual litigation. The planning rule is intended to improve opportunities to collaborate with a wide variety of people and reach well-reasoned and sustainable solutions to natural resource issues.

Comment: Statutory authority. Many public comments focused on the statutory authority for the proposed planning rule stating that the proposed rule should both recognize and comply with existing laws. Some people felt that the proposed rule provided improved integration of environmental laws and regulations; while, others said that the proposed rule goes beyond legal limitations and that only Congress can make such changes in national policy.

Response: The Department agrees that the planning rule improves the integration of current laws and recognizes it as consistent with the laws that guide all Forest Service activities. A full discussion related to this concern is addressed in this preamble under the heading statutory authority.

Comment: Public Lands Planning and Management Improvement Act. Some reviewers noted that the Public Lands Planning and Management Improvement Act (PLPMIA) offered provisions for meeting human and wildlife needs. They felt that act should be used to help streamline the management process, resolve contradictory laws, and modernize the land management laws.

Response: The Congress is considering the proposed legislation, but it is not law and therefore does not apply. Moreover, the Department believes human and wildlife needs are adequately represented in the final planning rule, see sections 219.20 and 219.21, and the management process is streamlined.

Comment: Conflicts over values. In the words of one respondent, ''Most of the crises that beset the Forest Service since the age of environmentalism have concerned conflicts over values, not individual land use decisions.'' Value conflicts can only be resolved through effective policymaking, this person contended, and the Forest Service's policymaking efforts are in need of improvement.

Response: The planning framework outlined in the regulation is intended to provide a flexible mechanism to identify and solve issues before they mature into intractable problems pitting people against one another, rather than seeking mutually beneficial results. There is no intention to diminish the importance of the values people possess with regard to the use and enjoyment of national forests and grasslands. Better policies are the result of people working together to solve common problems.

Comment: Analysis of prior appeals. Some respondents suggested that the Forest Service address prior appeals against Forest Service decisions as part of the proposed planning rule. They believed that interviews with people who filed appeals should be incorporated into the planning process.

Response: Appeals and the concerns of national forest and grassland users were considered in development of the planning rule. The team that developed the proposed regulation and response to public comment based their work on years of experience in addressing the concerns of interested citizens. The increased emphasis that the planning rule places on collaboration is a direct response to improve working relationships among interested citizens.

Comment: Vested water rights. Some respondents are concerned that discretionary authority granted to forest planners in the proposed planning rule may override states' water rights. They asserted that no law allows ecological needs to surpass vested state water rights.

Response: The planning regulation does not override existing water rights adjudication procedures.

Comment: Selling the national forests. One person suggested that the Forest Service sell some of the national forest land back to United States citizens in order to generate tax revenue.

Response: This rule addresses management of lands in public ownership. Planning conducted in accordance with this rule may address land ownership adjustment needs where that is an issue. It is beyond the authority of the Secretary of Agriculture to sell national forests and grasslands to generate tax revenue.

Comment: Civil rights analysis. One reviewer asked if the proposed rule would require a civil rights impact analysis, as required by Departmental Regulation 4300–4, ''since the rule will affect various publics.''

Response: A civil rights impact analysis has been prepared and is available upon request from the person listed at the beginning of this final rulemaking document under **FOR FURTHER INFORMATION CONTACT.** The analysis describes the increased opportunities many people will have to become engaged in National Forest System planning under the new rule. It concludes that ''no adverse civil rights impacts are anticipated on the delivery of benefits or other program outcomes on an underrepresented population, to U.S. populations or communities, or employees of USDA on a national level.''

Comment: General clarity. Many comments reflected a need to reevaluate the clarity of the language used in the proposed planning rule. Many contended the general comprehensibility of the language needed to be improved to allow the public to better understand the concepts of the rule. Many of the respondents felt that the document was too verbose and redundant to understand. Further, some people argued that the proposed rule was too complex for most citizens to comprehend. In addition, some contended that the format of the proposed rule inundated the reader with a multitude of long and tedious subdivisions, which made the document difficult to follow.

Response: The Department has made a genuine effort to simplify the language of the final rule. The length of the text has been reduced, and several technical terms (e.g. ecological integrity and watershed integrity) have been eliminated to improve readability. The text about sustainability has been rearranged to combine analysis requirements related to sustainability with other analysis requirements. In addition, the goals and principles are simplified in the final rule.

Comment: Discretionary versus compulsory direction. Many people indicated that the language of the proposed planning rule was too discretionary. Words like ''should'' and ''may,'' many believed, should be replaced with more definitive wording such as ''shall'' or ''must.'' These respondents asserted that the nebulous nature of the rule would weaken its enforceability. By contrast, others said that the proposed regulation had too many ''must'' and ''shall'' statements and would, therefore, be impossible to implement because of all the restrictions imposed.

Response: The Department has carefully considered which provisions of the final planning regulation should be discretionary versus compulsory direction and the use of this language should not be viewed as either increasing or decreasing the importance of the planning procedures in developing sound solutions to natural resource issues. The final rule does not contain any ''shall'' statements.

Section-by-Section Response to Public Comments

The majority of comments addressed specific sections of the proposed rule. These comments and responses are summarized below.

Purpose, Goals, and Principles

In the proposed rule this chapter is named ''Purpose, Goals, and Principles.'' In the final rule, it is shortened to '' Purpose and Principles.'' Revisions were made to clarify and simplify language in the final rule.

Proposed Section 219.1—Purpose. This section described the purpose of the proposed rule. The proposed rule guides planning efforts toward the overall goal of sustainability. Purposes are to: (1) Guide stewardship; (2) set forth a process for amending and revising plans and for monitoring plan implementation; and (3) guide selection and implementation of site-specific actions. The national forests were set aside and protected from exploitation to

embrace, as a matter of national policy, a system of sustainable forest reserves to protect water resources and ensure a continuous supply of timber for benefit of the American public. The proposed rule incorporated language recommended by the Committee of Scientists (see Chapter 8, ''Sustaining the People's Lands'').

Comment: Ecological Sustainability and Compliance with the Multiple-Use Sustained-Yield Act of 1960 and the Organic Administration Act. Many respondents felt that the agency erred in placing ecological sustainability as the first priority. They felt that the agency was ignoring its legislative mandates for multiple-use and had slighted the importance of humans and their needs in the management of National Forest System lands.

According to some respondents, changing the emphasis of planning to ecological sustainability would virtually make it impossible to comply with the MUSYA. They were concerned that the MUSYA requirement, to ensure a continued supply of products and services in perpetuity, would be jeopardized. Additional public comments expressed concern that provisions of the Organic Administration Act of 1897 could not be achieved with ecological sustainability as the primary objective.

Response: The proposed rule's focus on sustaining ecosystems is fully compatible with the Forest Service's underlying statutes. In order to ensure that the multiple-uses can be sustained in perpetuity, decisions must be made with sustainability as the overall guiding principle. Ecological sustainability lays a necessary foundation for national forests and grasslands to contribute to the economic and social needs of citizens. Without first maintaining, and where appropriate restoring, ecologically sustainable systems the productivity of the land for various social and economic uses could be impaired, therefore, planning for multiple-use, sustained-yield management of national forest and grasslands must operate within a baseline level that ensures the sustainability of ecological systems. Although some respondents perceived a conflict between emphasis on sustainable ecosystems and legislative mandates, the Department does not believe this is true. Instead, the Department sees ecological sustainability not only as a complement to multiple-use, sustained-yield management, but also as a prerequisite for it.

It is the Department's view that the rule is consistent with the Forest Service's conservation and legislative mandates. Contrary to some comments received, the proposed rule did not change the overarching purpose for planning. Rather, it affirmed the direction in the MUSYA. As used in the final rule, sustainability embodies the congressional mandates of multiple-use and sustained-yield without impairing the productivity of the land. In the final rule, sustainability is described as comprising three intricately linked elements that integrate the ecological, social, and economic aspects of our world. It is virtually impossible to separate one element from the other.

For example, without a sound social and economic system in place, people are more likely to over-exploit the natural world to meet basic human needs. At the same time, ecological resources constitute the foundation upon which our ability to meet other needs ultimately rests. Ecological elements are the capital, the investment in our future. Sustainability provides for meeting needs of the present generation without compromising the ability of future generations to meet their needs. In response to public comment, language is added at the end of section 219.1 of the final rule to clarify the relationship among ecological, social, and economic sustainability.

Under the Organic Administration Act of 1897, the forest reserves were set aside and protected from exploitation, with the intention to embrace a system of sustainable forest reserves that would protect water resources and ensure a continuous supply of timber for the benefit of the American public. As the U.S. population grows and the environmental consequences of human activities are better understood, it is not only logical, but it is imperative that knowledge and skills are applied to ensure the sustainable, continuous use and enjoyment of our natural resource legacy as described in the Organic Administration Act.

Ecological sustainability has always been the linchpin of managing national forests and grasslands. The final rule provides for progressively improving the understanding of how to achieve sustainable use and enjoyment of the National Forest System through monitoring results and effective engagement of scientific knowledge and the skills and interests of citizens, elected officials, and others. The increased use of national forests and grasslands requires increased knowledge and understanding of sustainable multiple-uses. If the ecological basis of the national forests and grasslands is compromised in providing products, services uses, and values, then a ''continuous supply of products and services'' will not be achieved in ''perpetuity'' as required by MUSYA.

Proposed Section 219.2—Goals and principles for planning. This section of the proposed rule identified five major goals for land and resource management planning, with each goal having a set of supporting principles. In the final rule, this section has been renamed ''Principles.''

Comment: Quantifiable information. Many believed the proposed planning rule should include objective and quantifiable information. In particular, some respondents recommended that the proposed planning rule provide statistical data to support the need for the plan revisions. They felt that access to quantifiable information could allow the public to offer more informed comments. Others suggested that the proposed rule include measures to assess goal achievement in forest planning. One respondent contended that beauty and inspiration are too subjective to use as points of consideration in land resource and management planning.

Response: A premise of the final rule is science-based decisionmaking, including use of the best available information. Sections 219.5, 219.20, and 219.21 in the final rule describe appropriate assessments and analyses needed prior to proposing a site-specific action or a plan amendment or revision. The rule also stresses the development and implementation of monitoring strategies to use in evaluating plan implementation and achievement of sustainability (section 219.11). The development of both qualitative and quantitative information described in the planning rule will improve the overall understanding and sustainable use of the National Forest System.

Comment: Sampling interested parties to determine resource objectives. Developing, achieving, and evaluating planning goals and objectives elicited a number of comments. One recreational organization recommended that the Forest Service survey a random sample of parties interested in National Forest System lands when determining specific resource objectives. They suggested by using a random sampling scheme, the agency could assure that all interests have an opportunity to provide input in the planning process.

Response: The final rule does not require specific tools or analytical approaches to sampling user preferences. The information and analysis described in section 219.21 may be obtained through sampling in appropriate circumstances. The rule

also provides opportunities for interested and affected people to participate in planning for the use and enjoyment of their national forests and grasslands. While sampling methods may prove useful for many tasks, the Department believes it is imperative that people participate with Forest Service personnel in planning.

Comment: Long-term planning. Several respondents suggested that the proposed planning rule emphasize long-term planning. These people felt that long-term forest health should take precedence over short-term economic gains by resource extraction companies.

Response: While the planning rule does not set forth specific short-term versus long-term standards, the planning rule is designed to ensure that short-term uses do not damage or otherwise harm the long-term sustainability of each national forest and grassland.

Comment: Ecological values. Some respondents believed that ecological values should be defined as intrinsic goals rather than constraints. The conservation of ecological values was important for many who recommended that the proposed planning rule be used as a guide in preserving national forests. They expressed concern that the increasing human population will ultimately encroach on the few natural places left. They asserted preservation of National Forest System lands to offset this loss is imperative.

Response: The final planning rule states that the first priority for stewardship of the national forests and grasslands is to maintain or restore ecological sustainability. If the preservation of a unit of land is necessary to ensure long-term sustainability, that decision would be made through the planning process in a plan amendment or revision receiving full public review and comment within the Forest Service NEPA procedures.

Comment: Balancing economic and social needs. Several people expressed the belief that balancing economic and social needs should be a priority in national forest planning. Specifically, one person suggested that balancing selective logging practices, road maintenance, and access to national forest lands is crucial for successful forest management. Others recommended that the proposed rule's effects on industries and communities be evaluated prior to implementation.

Response: Balancing the production of multiple values, uses, products, and services from each national forest and grassland is a continual process achieved through collaboration and planning. The planning rule is intended to enhance collaboration and the balancing of social and economic needs in a sustainable environment. A cost-benefit analysis was done for the planning rule and is available. Regulatory implications are discussed later in this preamble.

Comment: Restricting corporate industry. Some respondents felt that restricting corporate industry use of national forests and grasslands should be a priority in planning. Respondents contended that, relatively speaking, large corporations pose greater detrimental impacts to national forests than do recreational users. The Forest Service should focus on improving and maintaining forests, rather than, as one person commented, ''catering to degrading commercial ventures.'' In contrast, others felt that the restoration of ecosystems as a guiding principle is not a valid, achievable planning goal.

Response: The Department believes that it is appropriate for both large corporations as well as small companies to have an active role in the management and stewardship of national forests and grasslands. In the planning rule, no group is provided an unfair advantage or disadvantage in securing use or access to natural resources.

Comment: Balancing the world's resource needs. Other respondents asserted that Forest Service's mission statement should include balancing the world's resource needs. ''With both balance and agreement, the Forest Service can once again be the world's leader in land and natural resource management,'' they contended. Some citizens feared the scope of the proposed planning effort might make the United States dependent on other countries for raw materials. ''Since we have some of the best environmental laws to deal with,'' they write, ''it makes little sense globally to obtain raw materials from countries who do not have adequate restrictions.''

Response: As described in the NFMA, the Forest Service * * * ''has both a responsibility and an opportunity to be a leader in assuring that the Nation maintains a natural resource conservation posture that will meet the requirements of our people in perpetuity.'' Regarding the global nature of today's world, it is certainly appropriate to consider the resource needs, uses, and practices of our national trading partners and others. The planning rule sets the stage for the wise, sustained use of the national forests and grasslands, and provides a link to national level planning, though which national policy makers can consider methods to improve the production and use of renewable natural resources in the United States and elsewhere.

Comment: Limiting planning to smaller areas. Some people felt that forest plans should be directed toward unit-sized planning efforts. These respondents believed that keeping planning limited to smaller areas ensures greater understanding by both the public and forest managers.

Response: The planning regulations provide for adjusting the boundaries of planning based on the scope and scale of issues addressed. In many places, planning and involvement with the public will take place in areas smaller than a national forest or grassland. Only in the revision process is it required that the entire national forest or grassland be considered. Even in that circumstance, decisions may be made that apply only to geographic areas within or among administrative units.

Other changes. In the final rule, this section has been reorganized and restructured for clarity and readability. Goal statements have been removed from this section in the final rule to prevent confusion with the term ''goal'' used in other contexts. Much of the text in the proposed rule provided background information regarding the principles of planning. The final rule provides more of an outline format to specifically highlight six planning principles and their key characteristics.

Paragraph (a) of the proposed rule provided that ''planning must be directed toward assuring the ecological sustainability of our watersheds, forests, and rangelands.'' The final rule has added language to maintain or restore the ecological sustainability of national forests and grasslands. This change is made to recognize the importance of ''restoration'' of national forest and grasslands.

Paragraph (a)(2) in the final rule provides that ''scientifically based strategies for sustainability'' benefit from independent scientific review. This change was made to this section from the proposed rule to acknowledge the importance of independent scientific review in this new planning structure.

The Framework for Planning

Proposed Section 219.3—Overview. This section of the proposed rule described the overall framework for planning, the levels of planning and decisionmaking, and the key elements of the planning framework.

Comment: Clarification of the planning framework. Many respondents felt that the planning framework needs more specific guidance and

requirements. Claiming that the framework will not assure consistency between different units of the National Forest System, some people recommended that the planning rule include uniform guidance applicable to each national forest and grassland. Other respondents asserted that the objectives of the framework are too vague and should include specific objectives for planning. Many people believed the planning rule inadequately addresses standards and guidelines that they think could result in a lack of agency accountability, inability to achieve planning goals, and inadequate protection of the environment. Some of these respondents suggested maintaining the minimum management requirements of the current rule. Others recommended including specific and enforceable standards and guidelines in the proposed planning rule, while some asked that these types of standards be established in individual national forest and grassland plans.

Response: The Department believes that less specific planning guidance is needed after almost two decades of experience implementing NFMA. The planning process included in the final rule is essentially unchanged from the proposed rule, and provides a flexible process that is responsive to issues associated with current conditions and experience with implementing the current plan. Standards required in all plans are addressed in section 219.7. Plan requirements for ecological sustainability are found in section 219.20(b).

Comment: Decisionmaking authority. Some respondents felt that the Forest Service is attempting to avoid its responsibility by emphasizing collaborative processes and recommended that the planning rule should further emphasize the agency's decisionmaking responsibility. Other respondents requested clarification on decisionmaking. They suggested that the planning rule describe national level planning processes as well as decisionmaking authority on multi-forest or regional projects. Other respondents expressed general concern regarding the implementation of the proposed rule and recommended making trial runs on a few forest plans before implementing the changes system-wide.

Response: It is the responsibility of the Forest Service to encourage involvement with the public in the management of the public's lands. The Forest Service is redeeming this responsibility by providing for early involvement and collaboration through the planning framework. Instead of working in an isolated environment, the agency will openly address the issues confronting the national forests and grasslands, enlisting the assistance of interested and affected parties through expanded public involvement and collaboration. The intent is to foster a good faith effort to reach resolution on agreed upon problems before final decisions are made, and to hopefully reduce the level of costly lawsuits. However, the definition of ''responsible official'' makes it clear that this individual and the Forest Service have the authority and responsibility to oversee the planning process and make decisions on proposed actions.

Linkage to the national strategic plan has been added or clarified in several places in the final rule, including section 219.3(b). Multiple-forest and regional decisions are also addressed in this section.

Comment: Local-level planning and decisionmaking. Several respondents felt that the planning rule should emphasize local-level planning and decisionmaking, while others believed the proposed rule places too much responsibility at the local level. Some of the people favored increased focus and responsibility at the local level contended that the proposed rule's provisions not only are costly and inefficient, but also allow senior Forest Service authorities to undermine local decisions and planning efforts. Such actions, they contended, will alienate the public. These respondents suggested that the final rule limit national and regional level planning and decisionmaking. Other people who support a local level focus believed that local Forest Service officials are more knowledgeable about their specific forest or grassland than national officials and therefore are able to make better planning decisions. These respondents recommended increasing the decisionmaking authority of local agency officials. In contrast to these views, some respondents believed the proposed rule would place excessive authority at the local level. These people primarily felt that either additional requirements or higher levels of oversight were necessary to ensure consistency in planning among national forests or grasslands. Several of these respondents recommended that the proposed rule provide specific rules and guidelines for Forest Supervisors, while others suggested that the proposed rule maintain requirements for regional guidance and oversight.

Response: Fundamental to this rule is the notion that there is a hierarchy of scale to be considered when addressing resource management issues, and that it is the nature of the issue that guides the selection of the appropriate scale and level of the organization to address it. By not tying decisionmaking authority to a specific organizational position, the Department is promoting flexibility to do what makes sense for the issues ripe for consideration. The National Forest or Grassland Supervisor is the person most familiar with the resources and publics interested in his or her forest or grassland, and often the most appropriate to make decisions affecting those lands.

The rule should not be interpreted as excluding higher-level officials from decisions made at the forest and grassland level. If an issue warrants higher-level study and decisionmaking, such tasks can be undertaken. Also, through the objection process (section 219.32) the higher-level officials actually join the problem-solving process before an administrative decision is adopted. Advisory committees (section 219.18) provide yet another source of input to local decisionmaking.

Comment: Adequacy of funding. Many respondents felt that the implementation of the proposed planning process will require significant additional resources. They asserted that funding, staffing, and equipment needs will make the proposed planning processes prohibitively expensive. Several respondents believed that the proposed rule would restrict needed planning proposals based on inadequate funding. ''Plans should identify necessary actions even if adequate funding does not exist,'' wrote one organization. More specifically, other respondents focused more on funding for particular management actions. One such person suggested that the proposed rule address funding to mitigate potential damage from forest management activities.

Response: The Department believes that, rather than requiring significant additional resources, the planning framework, as adopted in the final rule, will put more resource earlier in the planning process and require less at the end of the process. This will shift the planning process from one of confrontation to collaboration. The scope of the planning effort will also be more focused on the issues selected for evaluation.

While funding of planning and projects remains an item under the prerogative of Congress, the Department hopes that Congress will support projects built using this collaborative process. In addition, the revised rule will promote a closer link to the budget process through requirements for

ongoing consideration of budgetary information (section 219.30). By evaluating the alternatives at the current or likely budgets, while considering other spending levels, as appropriate, the analysis will be based on realistic expectations and be more useful as strategic documents.

Other changes. Paragraph (a) in the proposed rule included five premises of the planning framework. Premise (1) is found in sections 219.5 and 219.12 of the final rule. Premise (2) is included as 219.3(c) in the final rule. Premise (3) is included in section 219.30 ''Plan documentation'' of the final rule. Premise (4) is included as 219.3(b)(4) and 219.10 of the final rule. Premise (5) is a general description of the planning framework and included in sections 219.3–219.11 of the final rule.

Paragraph (b) in the proposed rule, described the levels at which planning may occur, and who may be the responsible official. In the final rule, paragraph (b) is restructured in outline form. Planning will be conducted at the appropriate level depending on the scope and scale of the issues. In addition, the final rule specifically recognizes the role of the Forest Service national strategic plan required under the Government Performance and Results Act of 1993 (GPRA). The GPRA directs government agencies to establish national long-term goals, outcome measures, and strategies. The final rule clarifies that these are to be considered in managing the National Forest System. In particular, it provides for the development of outcome measures to evaluate ecological, social, and economic impacts, accountability, and management performance. The development of outcome measures will be included in the Forest Service directives System.

Paragraph (c) in the proposed rule lists the key elements. The list in the final rule has been changed slightly to line up with the subsequent sections of the planning framework and use consistent terminology. Cooperatively developed landscape goals are no longer specifically listed, however, they are still included in section 219.12 and may be considered as issues (section 219.4). This change was made to clarify the key elements of planning.

Proposed Section 219.4—Topics of general interest or concern. This section of the proposed rule established a process for identifying, discussing, and, if appropriate, acting on topics of general interest or concern that might emerge from a variety of sources. The process for identifying these topics was to be used for both plan amendments and revisions as well as for site-specific plans. In the final rule, this section has been renamed ''Identification and consideration of issues.''

Comment: Identification of issues. Many respondents believed that the proposed rule should provide additional details about how issues will be identified. Specifically, some people felt that current Forest Service public involvement methods do not provide an accurate representation of the interested public. They recommended that the Forest Service conduct unbiased sampling to determine public opinion about forest plans.

Response: The proposed rule established a collaborative process that will be used in addition to current public involvement methods. This approach is retained in the final rule. This process will improve the identification of issues. Also, the flexibility in approaches is very important to the collaborative process. Sampling is addressed in section 219.1 of the preamble.

Comment: Evaluation of topics. Many respondents expressed concern about the evaluation of topics of concern. Most of these people felt that the proposed rule gives the responsible official too much discretion in considering whether action will be taken on these topics. Many of these respondents felt the discretion in the rule could allow responsible officials to ignore important concerns.

Response: The regulation actually increases the accountability of the responsible official for addressing issues that are ''ripe'' for resolution. As now, the decision to move an issue forward for resolution is an agency prerogative. Accountability is increased however through the more open and collaborative process for identifying issues.

Comment: Limiting discretion. Several people advocated limiting discretion and suggested a number of remedies to this perceived problem such as establishing requirements for reasonableness and timeliness in the evaluation of topics of general concern, creating guidelines for the consideration and documentation of topics of general concern and requiring that the responsible official's decisions on topics of concern should be subject to administrative appeal or judicial review.

Response: The Department does not agree. It is imperative that the responsible officials maintain sole responsibility to review the circumstances surrounding an issue before investing time and agency resources in addressing one or more aspects of the issue. Each day, each responsible official has a host of possible issues pressed forward. It is through experience and collaboration with others that the issues that should be addressed are addressed. As described in the planning rule, there are several ways that a host of people, including higher-level officials, can become engaged in the identification and potential resolution of issues important in the plan area.

Other changes. The most noticeable change in this section, as adopted in the final rule, is replacement of ''topics of general interest or concern'' with the term ''issues.'' Although some members of the Committee of Scientists found ''issues'' to have a negative connotation, and to imply that some action must be taken, many found the terminology of the proposed rule to be vague and verbose. Therefore, the final rule refers to ''issues.'' This is consistent with the current planning regulations and more familiar with the public and within the agency.

Editorial changes were made to the proposed rule, including changes in terminology, to remain consistent with other parts of the rule (for example, ''ecological sustainability'' and ''range of expected variability''). The words ''consistent'' and ''consistency'' in the proposed rule are changed to avoid confusion with the use of that terminology in NFMA and section 219.10.

Proposed Section 219.5—Information development and interpretation. This section of the proposed rule described information needed to further consider a topic of general interest or concern. It provided direction on conducting broad-scale assessments and local analyses.

Comment: Discretion of responsible official. Some respondents felt that the discretionary authority given to the responsible official in the proposed rule may conflict with provisions for the use of scientific and collaborative input. These people recommended that the proposed rule limit the discretion of the responsible official in determining whether the available information is sufficient or additional data collection is needed.

Response: Implementation of the planning process of this rule promotes collaborative problem solving. The responsible official has access to a wide variety of information from staff specialists and a knowledgeable and often active national forest or grassland user community. A decision to initiate collection of additional data is a managerial choice that may be assisted by scientific review and science advisory boards, as appropriate. As many years of experience have

demonstrated for many issues, when authorities closely match responsibilities, the quality of decisions and overall public service improves.

Comment: Development of information. Some people recommended restricting large-scale planning to non-decisional, data collection efforts. Still others believed accurate data are essential for the Forest Service to assess the need for actions and to measure the effectiveness of its actions in planning. These people suggested that the proposed rule emphasized collecting and maintaining sufficient natural resource data. Some citizens asserted that the proposed rule should specify appropriate analysis tools and models to ensure consistency between national forests and grasslands.

Response: The Department agrees with the importance of applying the best available data, and has emphasized that need in the final rule. It encourages multi-scale assessments and analyses prior to proposing any actions. The final rule also promotes monitoring to obtain data, and scientific review of its use. In order to be able to respond promptly to scientific advances, the Department has avoided including specific analysis tools or models in a regulation. The Department believes that large-scale decisions may be necessary to respond to some issues; however, it does not expect every broad-scale assessment to lead to broad-scale decisions.

Comment: Public Involvement. Public involvement in information development and interpretation was a significant concern for many people. These people contended that the proposed rule's provisions on information development and interpretation do not provide sufficient opportunities for public input or review. Some of these people suggested that the proposed rule include provisions requiring collaboration in information development and interpretation, while others requested that the proposed rule comply with NEPA requirements. Another respondent believed that the final planning regulations should incorporate the guidelines for interdisciplinary planning teams from the 1982 planning regulations.

Response: The planning rule has several provisions for encouraging the public to participate in the identification and resolution of natural resource management issues. As described in sections 219.12 to 219.18, it is the intent of the rule that the Forest Service participate with others in building stewardship capacity—the ability to develop ideas, take action, and solve problems (section 219.2). The planning framework is characterized by an interdisciplinary collaborative approach (section 219.3). In addition, the NEPA process applied to planning must be interdisciplinary. The final rule also provides that each broad scale assessment should be designed and conducted with the assistance of scientists, resource professionals, government entities, and other individuals and organizations knowledgeable of the assessment area (section 219.5(a)(2)).

Comment: Interest group involvement. Some respondents expressed concerns regarding what groups will be involved in information development and interpretation. Some of these people felt that the Forest Service does not recognize or respect the knowledge and past stewardship of private property holders and lessees. These individuals recommended that the proposed rule emphasize the role of lessees and private property holders in information development and interpretation. Other respondents specifically suggested that the Forest Service engage environmental groups in conducting ecological assessments.

Response: As described in the planning rule, it is the intent of the Department and the Forest Service that a wide variety of people, including property holders and lessees and environmental groups engage in the consideration of their natural resources and in the stewardship of their national forests and grasslands (see sections 219.16 and 219.17). The final rule also provides that each broad scale assessment be designed and conducted with the assistance of scientists, resource professionals, government entities, and other individuals and organizations knowledgeable of the assessment area (section 219.5(a)(2)).

Comment: Consideration of activities outside of national forest boundaries. Believing that the failure to address national supply and demand trends could lead to an oversupply of specific resources, one respondent recommended that the proposed rule require the consideration of these trends in decisions specifically regarding grazing permits. Another person felt that consideration of activities outside National Forest System unit boundaries in planning could restrict resource extraction. This person suggested that the Forest Service be prohibited from restricting resource use on such a basis. Other respondents believed that the proposed rule fails to address the effects of agency planning on lands outside of National Forest System lands. These people recommended that the proposed rule should explicitly recognize these impacts.

Response: The planning process is designed to enable the Forest Service to address each of the above comments at the appropriate time and place. For example, if the supply and demand of a particular natural resource is relevant at a national scale, the Chief of the Forest Service, working with others, may address the concern. Likewise, if the supply of a local resource use is of concern to one or more communities, that may very well be an issue that is addressed in the revision or amendment to a plan. Planning is tailored to fit the needs of people in the use and enjoyment of their national forests and grasslands. Section 219.17(c) of the final rule was changed to include consideration of the effects of managing National Forest System lands on adjacent lands.

Comment: Use of broad-scale assessments. Many respondents expressed preferences about the use of broad-scale assessments in national forest planning. Some people opposed the use of broad-scale assessments, feeling that these efforts will be excessively expensive and that this expense will hinder the implementation of project proposals. Some respondents supported the use of broad-scale assessments in planning, and they believe private lands adjacent to national forests and grasslands should be included in such assessments. Focusing more on who should oversee the development of assessment processes, other respondents recommended that the final rule require the Forest Service to lead broad-scale assessments. These people felt that the proposed rule allows unacceptable influence by nongovernmental entities and that this could lead to decisions that are not in the best public interest.

Response: The amount and level of data collection and synthesis needed varies with the issue and the nature of the decision to be made. The responsible official is to determine if the information on hand is sufficient, or if additional information is desirable and can be obtained at a reasonable cost and in a timely manner. Where the issue is broad in scale, a broad-scale assessment is often needed. Where the issue is more limited in scale, local analyses are more appropriate. The final planning rule provides a flexible process that yields the data appropriate to address an issue, rather than mandating one approach. Information and data may be solicited and accepted from a variety of sources, including broad-scale assessments prepared or led by others. Managers must use their professional judgment to gauge the usefulness, reliability, and value of the information received.

Comment: Broad-scale assessments and NEPA public involvement requirements. Some respondents' comments focused on the proposed rule's relationship with National Environmental Policy Act (NEPA) public input requirements. These respondents felt that the provisions of the proposed rule allow the development of large-scale or national planning parameters outside the scope of public scrutiny. These people suggested that broad-scale assessments should not be used in place of the NEPA scoping process.

Response: Broad-scale assessments do not constitute a decision point—they are a source of data and information that may be used in later decisionmaking by the agency or others. The preparation of broad-scale assessments is intended to be an open and collaborative process, one that encourages participation by interested and affected parties. Involvement in broad-scale assessments in no way supplants or eliminates the requirement for scoping under NEPA or other public involvement in other aspects of the planning framework. The text of the regulation in section 219.6, Proposed actions, emphasizes that NEPA requirements must be met for every proposed action, and activities associated with broad-scale assessments are intended to complement, rather than replace the scoping process of NEPA for subsequent decisionmaking.

Comment: Adequacy of data in broad-scale assessments. Many respondents expressed concern regarding the adequacy of data used in broad-scale assessments. Some of these people felt that the proposed rule would allow the use of inadequate or out-dated data. According to one person, the use of this data ''leads to erroneous conclusions; these erroneous conclusions lead to poorly thought-out recommendations.'' Other respondents asserted that the proposed rule weakens existing requirements for the use of current data. One respondent specifically requested that the agency seek additional funds to perform broad-scale assessments to avoid impacting Forest Service research station budgets.

Response: The planning rule has several provisions for the inclusion of the best available science in all activities associated with planning as described in sections 219.22 to 219.25. Through science advisory boards and the use of science consistency evaluations, the best available science is sought for each key step in the planning process.

Comment: Local analyses. A few respondents suggested that the proposed rule emphasize local analyses, while others requested that the rule include clarification on what local analyses entail. One person, claiming that the Forest Service lacks the information necessary to make informed planning decisions, recommended that the proposed rule require landscape assessments be conducted on all national forests and grasslands.

Response: The planning process is designed to ensure that the appropriate information is gathered and evaluated before decisions are made. The extensive collaboration among interested and affected people as well as the increased involvement of science in the planning process are intended to highlight information needs and ensure appropriate consideration of all elements affecting sustainable use of national forests and grasslands. The rule encourages the use of local analyses as a basis for proposals at a comparable scale.

Comment: Terminology to describe spatial scales. One respondent questioned the use of ''broad'' and ''local'' to describe the scale of analysis in the proposed planning regulations. ''Coarse'' and ''fine filters'' are the technical terms most often used in Forest Service management plans and this person felt these widely used and clearly defined terms should replace ''broad'' and ''local'' in the final rule.

Response: Even though the terms ''coarse'' and ''fine'' filters are used frequently among some natural resource professionals, they are not identical to scale descriptors. We do refer to these terms in our response to comments for section 219.20. We believe that the use of the terms ''broad'' and ''local'' in the final rule describe the extent of assessments and analyses to a larger number of national forest and grassland users.

Comment: Scope of spatial and temporal scales. Several respondents supported the collection and analysis of ecological data on a variety of spatial and temporal scales. One respondent suggested that the final rule expand the scale of analysis to include cumulative effects of global magnitude. Conversely, some individuals questioned the use of a variety of spatial and temporal scales. Such a mandate requires funding and staffing beyond the means of the current Forest Service structure, according to these respondents. One citizen questioned the utility of using varying scales, asserting that such a hierarchical approach would lead to specific project plans containing forgiving, default language that lacks serious standards and thresholds.

Response: The variable scale planning process envisioned by the planning rule is intended to enable planners, managers, and the public to identify and act upon important issues at the appropriate scale for their resolution. Through the identification of issues that may cross many political boundaries, interested and affected people can work together to reach common solutions among many landowners and natural resource users. Cumulative impacts will also be addressed through agency NEPA procedures. Appropriate analyses and monitoring of results are used to ensure that the cumulative effects of small actions do not result in unwanted or unanticipated impacts. The responsible official has the authority to determine the appropriate scope and scale of analysis and data collection. In making this determination, the responsible official appropriately applies collaborative processes and uses the best available science.

Other changes. The proposed rule stated that the Regional Forester is responsible for National Forest System participation in broad-scale assessments. The final rule requires Station Directors and Regional Foresters to have joint responsibility for Forest Service participation in broad-scale assessments. It no longer addresses Forest Service participation in broad-scale assessments led by others. The Department believes it is not necessary to address the possible actions of others in this rule.

The requirement to use the best available scientific information and analysis is moved to sections 219.22 and 219.23 in the final rule. Examples of possible uses of assessment information in the proposed rule are generalized to ''other purposes'' in the final rule, and the language made consistent with the description of uses of local analysis. The final rule clarifies that assessments be used to evaluate the factors that contribute to the conditions and trends observed and is important in gaining understanding of issues.

The proposed rule stated that the purpose of local analyses was to provide information to aid in the identification of possible actions or projects to achieve desired conditions. The final rule expands the use of local analyses so that an analysis could be tailored to the scope of issues rather than potential actions. Similarly, the final rule provides for the use of social or economic analysis units for local analyses if warranted by the scope and context of the issues under consideration.

The components of both broad-scale assessments and local analyses were described as mandatory in the proposed rule. The amount and level of data

collection and synthesis needed varied with the issue and the nature of the decision to be made. The responsible official was to determine if the information on hand was sufficient, or if additional information was desirable and could be obtained at a reasonable cost and in a timely manner. Where the issue was broad in scale, a broad-scale assessment was often needed. Where the issue was more limited in scale, local analyses were more appropriate. The final rule provides for a flexible process that yields the data appropriate to address an issue, eliminating unnecessary analysis requirements. Information and data can be solicited and accepted from a variety of sources, including broad-scale assessments prepared or led by others. Managers must use their professional judgment to gauge the usefulness, reliability, and value of the information received.

Proposed Section 219.6—Proposed actions. This section identifies the point at which a responsible official initiates a decisionmaking process to resolve an issue, based on the information that has been developed and interpreted. No public concerns explicitly related to this section were identified in the analysis of public comment. Paragraph (b) was redrafted in the final rule to make it clear that public involvement and collaborative activities, related to issue identification and analyses of information, can be used as part of the scoping process required in the Forest Service NEPA procedures.

Proposed Section 219.7—Plan decisions that guide future actions. This section of the proposed rule described categories of decisions in land and resource management plans that would guide future agency actions. The title was changed in the final rule to ''Plan decisions.''

Comment: Consistency of plan decisions among plan areas. Some people question how the Forest Service will maintain consistency between national forests if regional guides are eliminated as indicated in the proposed rule

Response: The proposed rule allowed the scope of decisions to be tailored to the scope of the issues relevant to the plan area. Decisions may be made simultaneously for multiple administrative units, in a manner similar to what has occurred with regional guide amendments under the current rule. Section 219.3 of the final rule authorizes and encourages joint planning on multiple administrative units. In addition, the objection process (section 219.32), the addition of science consistency evaluations (section 219.24), and the requirement to incorporate regional guide direction into agency procedures or plan decisions (section 219.35) ensure consistency among national forests and grasslands.

Comment: Desired conditions. Many people commented on the proposed planning rule's emphasis on desired conditions. Some contended that the emphasis on desired conditions was an improvement over the Forest Service's perceived current focus on products and services. One respondent recommended that specific requirements for detailed descriptions of desired future conditions be included in plans. Some respondents believed that the proposed rule did not clearly define how ''desired future conditions'' would be developed.

Response: The Department agrees that emphasis on the desired conditions, rather than an estimate of what may or may not be produced from a unit of land, provides a more meaningful basis for people to discuss suitable and unsuitable uses of specific areas within national forests and grasslands. The planning rule uses the term ''desired condition'' rather than ''desired future condition'' to stress the point that there are many areas of national forests and grasslands that are now in a ''desired condition'' and that use of the term ''future'' was not necessary. In addition, the term ''goal'' was removed as a planning decision. A clear explanation of a desired condition for all or a part of a plan area included statements that describe the conditions sought or the ''goals'' of the area. Therefore, it is not necessary to have a category of plan decisions that are called ''goals.'' The Department believes that the responsible official should evaluate and address conditions relevant to the issues and the scope of the decision being made, and does not feel it is appropriate to include in the rule more specific requirements for how to develop desired conditions.

Comment: Standards and guidelines. Some respondents asserted that the existing rule is unclear about the difference between standards and guidelines and that this has ''caused a lot of confusion, false expectations, and conflict.'' These people recommended clarifying the difference between guidelines and standards in the proposed rule. Others believed that the proposed planning regulations should establish enforceable criteria for the development of objectives, standards, and guidelines in forest planning rather than relegating such criteria to the Forest Service Manual.

Response: This concern is addressed in the final rule by modifying the definition for standards (section 219.7) and by removing the term ''guidelines.'' This was done because the use of both terms, standards and guidelines, was confusing. In the proposed rule, the mandatory or discretionary nature of a provision was contained in the description of that provision, not by whether it was labeled a standard or a guideline. In the final rule, a provision that is labeled as a standard in a plan can be either mandatory or discretionary depending upon the language of the standard and the scope of its requirements.

Comment: Range of management alternatives. Of those respondents who address requirements for forest plans in the proposed rule, many felt that ''consideration of a full range of management alternatives'' will ''allow planners to identify important management options, thresholds, and trade-offs.'' These people suggested the proposed rule include provisions requiring the Forest Service to develop a full range of management alternatives in its forest plans. One organization contended that the proposed planning regulations should retain programmatic consultation as a means to challenge land and resource management plans.

Response: The Department believes that the collaboration emphasized by this rule will lead to a thorough examination of the options and tradeoffs relevant to the issues that have been identified. A full range of management alternatives that meets the purpose and need for changes in the proposed plan is required in accordance with Forest Service NEPA procedures. Neither the proposed nor final rule directly addressed Endangered Species Act consultation procedures, which are described in 50 CFR part 402. The final rule does require the incorporation of non-discretionary terms of biological opinions into plans (section 219.20(b)(3)).

Comment: Preservation of ecological diversity. Several respondents cited the current rule's requirements for the prevention of ''large-scale conversions of national forest lands to a single-tree species'' as an example of the imperative language they would like to see retained in the final rule.

Response: The final rule provides for ecological diversity in section 219.20, wherein plan decisions must provide for ecosystem composition and structure similar to that which would be expected under natural disturbance regimes. The Department believes that large-scale type conversions would not meet this requirement and that more imperative language is not necessary.

Comment: Preservation of scenic beauty. One person requested that the proposed rule require specific

guidelines for the preservation of scenic beauty. Asserting that one of the primary values of national forests mentioned by the public is scenic beauty, this respondent feels the Forest Service should address this concern in the final rule.

Response: The final rule requires that standards be developed for each plan that includes methods of achieving aesthetic objectives.

Comment: Watershed restoration. Several individuals felt the proposed rule needed to include specific guidelines for restoring and protecting water resources. Some suggested that the criteria for watershed restoration and protection be expanded. Several individuals believed the proper functioning of all the physical components of watersheds is an essential prerequisite to attaining ecological sustainability.

Response: The Department believes that it has given high priority to watershed restoration by including aquatic and riparian systems as a component of ecological sustainability (section 219.20(a)(1)(i)(B)), and focusing on ecological sustainability. In addition, watershed condition is one of the factors in section 219.28 used for the identification of lands were timber may not be harvested.

Comment: Restorative employment. One individual believed that the Forest Service should shift emphasis from fostering an extractive economy to championing restorative employment on national forests.

Response: This rule establishes ecological sustainability as the first priority for stewardship of the national forests and grasslands (section 219.19). It also requires the Forest Service to consider opportunities to provide social and economic benefits to communities through natural resource restoration strategies (section 219.21).

Comment: Invasive species. Believing that invasive species disrupt expected ecosystem functions, several citizens felt that the failure to sufficiently address this concern was a major flaw in the proposed rule. One respondent asserted that roads are the major vectors for the spread of noxious weeds throughout national forests. Road construction and off-road vehicle use need to be restricted, this individual asserted, if the spread of noxious weeds is to be slowed. Conversely, another individual believed the proposed planning regulations should qualify the mandate to control the spread of non-native species. Although this person stated that the Forest Service should not knowingly spread invasive species, this individual believed that there are situations where these processes occur naturally and therefore it would be ''extremely expensive if not impossible for the agency to prevent the phenomena.'' Another respondent requested that the proposed planning regulations address the ecological and human health impacts of chemical applications to control invasive species.

Response: The final rule includes invasive or noxious plant or animal species as factors to consider in evaluating and providing for ecosystem diversity (section 219.20). Where such factors are contributing to loss of ecological sustainability, the Department expects invasive species to be an issue that is sufficiently addressed. Use of chemicals or other kinds of treatments would not normally be determined as part of a plan decision, as described by this rule. Separate national road management and roadless area policy initiatives are addressing road construction and management. Off-road vehicle use would be addressed through the planning process at a local level.

Comment: Fire management strategies. Some respondents felt that the Forest Service should suppress fires. Allowing forests to burn was seen as a waste of resources to these people. Others asserted that the Forest Service should allow fires to burn, proposing that restoring fire disturbance regimes will, in turn, help restore ecological sustainability. One respondent questioned how the Forest Service would prescribe fire to restore ecosystems while maintaining the air resource value of visibility. This individual felt that the proposed planning regulations should clarify how this conflict will be resolved.

Response: The Department does not believe that this rule is the appropriate place to resolve questions of fire management policy. However, the planning framework provided by this rule will facilitate resolving them at the appropriate scale. Fire may be an issue handled at the national or regional scale. For example, the Forest Service has recently developed new information about the risk of catastrophic fires that may be useful for planning at a national or regional level. Planning could also happen at the forest plan or landscape level if scientific information or a local community suggested that fire was an issue that should be addressed through a specific project or series of projects and the responsible official determined that the issue should be considered and sufficient information existed to address it. The collaborative and flexible planning process outlined in this final rule is fully consistent with ongoing efforts at the Forest Service to address fire risks to communities and the environment.

Comment: Wildlife on grazing allotments. Believing that hunting has greater economic potential than that of grazing, another person suggested that game species be given priority over cattle in management area allocations. Elk and bison are not only endemic, but they would also provide hunting revenues according to this individual.

Response: The Department does not believe that this rule is the appropriate place to resolve questions of livestock and big game conflicts. However, the planning framework provided by this rule will facilitate resolving conflicts at the appropriate scale.

Other changes. The introductory paragraph in the final rule differs in two ways from the proposed rule. The paragraph clarifies that decisions may apply to all or parts of a plan area and must reflect the ongoing and anticipated actions of landowners adjacent and within national forest and grassland boundaries. It acknowledges the possibility that plan decisions may commit resources to site-specific uses in some cases.

The proposed rule described four categories of decisions. The final rule lists five and shortens the descriptions of each. Standards are separated from objectives because these are considered to be different types of decisions. Objectives describe intended results over a projected period of time. Standards describe the limitations necessary to achieve objectives. Standards are adopted, when needed, to achieve objectives and desired conditions.

In paragraph (c) of the final rule, standards have been defined more specifically than in the proposed rule to emphasize that they are requirements, rather than statements of intent, and that they apply to land uses and management actions rather than outcomes. The proposed rule included three standards required by NFMA. The final rule adds a fourth general category of standards that must be included to ensure achievement of sustained multiple-use of national forests and grasslands.

Paragraph (d) in the final rule was paragraph (c) in the proposed rule and addresses suitable land uses. Livestock grazing is added to the list of suitable land uses within the National Forest System based on comments received for section 219.26. Paragraph (e) in the final rule was paragraph (d) in the proposed rule. This section requires an identifiable monitoring and evaluation

strategy that is required by each plan in section 219.11.

Proposed Section 219.8—Amendment. This section of the proposed rule addressed amendments to plans as an addition to or the modification or deletion of one or more of the decisions listed in section 219.7. An amendment to a plan was defined as a plan decision. It also addressed the process through which amendments must be made. There were no additional requirements beyond those presented in the rest of the planning framework and Forest Service NEPA procedures.

Comment: Timeframes. Many respondents expressed concerns regarding the time period of Forest Service planning efforts. Some of these people felt that the proposed rule's provisions allow for various parties to delay amendment and revision processes. Some of these respondents recommended that the proposed rule include specific time limitations on revisions and amendments, while one person suggested that the proposed rule include provisions allowing ongoing activities to continue during plan amendments. Some believed the proposed planning regulations should require consideration of impacts to the entire planning area during amendment, revision, and objection procedures.

Response: The Department envisions that proposed amendments and revisions be completed in a timely manner considering the complexity of the issues and public interest in pending proposals. Ongoing activities may continue while an existing plan is being amended or revised (40 CFR 1506.1(c)). Impacts must be considered in accordance with NEPA procedures.

Comment: Significant plan amendments. One person felt that the proposed rule circumvents the criteria for determining ''significant amendments'' described in the NFMA. In the proposed and final rule, a proposed plan amendment that may create significant environmental impact is deemed to be a significant amendment as described in NFMA. This person suggested that the proposed rule does not comply with the NFMA requirements in that a plan amendment that may create large social or economic effects should require a significant plan amendment. However, a plan amendment that would create only social or economic effects would not necessarily require preparation of an environmental impact statement. A change in the projected level of timber production was cited as an example of such a situation.

Response: The Department believes that any plan amendment that may create significant environmental effects should be considered as a significant amendment as described in the NFMA. It is unreasonable to conclude that a plan amendment may create only social or economic effects apart from physical or biological effects. The proposed amendment that may create significant environmental effects would require preparation of an environmental impact statement and a 90-day public review period for the draft environmental impact statement. Such an amendment would be a significant amendment to a plan.

Comment: Provisions related to amendments and revisions need additional requirements. A few people recommended the proposed rule include specific criteria for initiating amendments and revisions. Another respondent recommended that the proposed rule include specific provisions for the review of environmental impact statements generated by other federal agencies for actions impacting national forest plans.

Response: The Department expects that amendments will occur frequently in response to new information and newly identified issues. If conditions have changed significantly throughout the plan area, the responsible official may revise the plan. In the final rule, the decision to propose an amendment or a revision, if under the legal time limit, remains discretionary, as in both the current and proposed rules. This enables the responsible official to consider resource and administrative factors, and other applicable information prior to proposing to amend a plan. While not specifically mentioned in the rule, the Department expects the Forest Service to consider environmental impact statements prepared by other agencies as potential sources of issues to be addressed.

Other changes. The final rule references other applicable sections of the rule for additional requirements to consider in making an amendment. The final rule changes the focus of paragraph (b) from addressing ''Plan amendments in conjunction with site-specific decisions'' to ''Environmental review of a proposed plan amendment.''

Proposed Section 219.9—Revision. This section of the proposed rule described the process to be used periodically to review the plan. Paragraph (a) of this section of the rule describes revision as a process that is required in accordance with 16 U.S.C. 1604(f)(5).

Comment: Adaptability. Contending that the current planning process is so slow that it produces obsolete plans, some respondents supported the proposed rule's emphasis on adaptability. One person even asserted that, given ongoing updates, the requirement for revisions every fifteen years is unnecessary and should be eliminated.

Response: The fifteen-year timeframe for revisions is a statutory requirement. The final rule has been changed, however, so that it does not incorporate a specific timeframe. Rather, it allows the timeframe to be governed by applicable law. Under the rule, the scope of revision is not open-ended, but focuses on the identified issues. If there are few issues, the process should be focused and simplified accordingly.

Comment: Relationship to the proposed Roadless Area Conservation Rule. Some individuals explicitly requested that the Forest Service clarify the relationship between the proposed Roadless Area Conservation Rule (proposed roadless rule) and the planning rule and how the planning rule will account for the proposed roadless rule through the planning process. In addition, some respondents suggested that the local planning process is better suited to determine future management direction than national rulemaking for roadless areas, particularly for those roadless areas not yet identified.

Response: The final rule clarifies the relationship of the planning rule with the proposed Roadless Area Conservation Rule (proposed roadless rule) described in Forest Service Roadless Area Conservation, Draft Environmental Impact Statement, Volume 2, dated May, 2000 and 65 FR 30276, May 10, 2000. The terms ''inventoried roadless areas'' and ''unroaded areas'' are described in the planning rule to clarify the relationship of the final planning rule to the proposed roadless rule and the Forest Service's recently proposed road management policy. The proposed road management policy describes analysis methods and procedures that would complement the planning-related activities of national forests and grasslands. The proposed rule regarding roadless areas would prohibit road construction and reconstruction in inventoried roadless areas. It would also require land managers to consider certain roadless area characteristics during plan revision and to then decide in the context of overall multiple-use objectives whether additional protections should be afforded inventoried roadless areas or other unroaded areas. Similarly, the proposed planning rule would require the responsible official to consider designating roadless areas during plan

revision along with any needed plan decisions related to such areas. The final planning rule clarifies that analyses and decisions regarding inventoried roadless areas and other unroaded areas, other than the national prohibitions that may be established in the final Roadless Area Conservation Rule, will be made through the planning process articulated in this final rule. Under this final rule, the responsible official is required to evaluate inventoried roadless areas and unroaded areas and identify areas that warrant protection and the level of protection to be afforded.

Public comments suggested, and the Department agrees, that the procedures described in the proposed roadless rule were very similar to those outlined in the proposed planning rule. Moreover, comments suggested that appropriate roadless area protections could be best considered using the explicit collaboration, science, sustainability, and planning requirements of the planning rule.

The Department has determined that the review of the roadless characteristics contemplated by the proposed roadless rule is an explicit function of land management planning and should be addressed through this rule. Moreover, most of the roadless area characteristics identified in section 294.13 of the proposed roadless rule are characteristics otherwise required to be analyzed during plan revision or at other times as deemed appropriate by the responsible official. In the final planning rule, the requirements for identifying roadless areas and additional roadless area protections are an explicit part of the plan revision process as described in section 219.9(b)(8). The analysis and treatment of characteristics of roadless areas as identified in the proposed roadless rule are listed below as they compare to the requirements of the final planning rule.

Proposed roadless rule	Final planning rule
294.13(a) At the time of plan revision, the quality and importance of nine characteristics of inventoried roadless areas and unroaded areas must be evaluated.	Section 219.9(b)(8) requires the responsible official to consider inventoried roadless areas and unroaded areas in all plan revisions and at other times as appropriate through the criteria in section 219.20(a) and 219.21(a). Those sections require development and analysis of information at a variety of spatial and temporal scales.
294.13(a)(1) Soil, water, and air; and ..... 294.13(a)(2) Sources of public drinking water	219.20(a)(1)(i)(B) Water resources: the diversity, abundance, and distribution of aquatic and riparian systems including streams, stream banks, coastal waters, estuaries, groundwater, lakes, wetlands, shorelines, riparian areas, and floodplains; stream channel morphology and condition, and flow regimes.
	219.20(a)(1)(i)(C) Soil resources: soil productivity; physical, chemical, and biological properties; soil loss; and compaction.
	219.20(a)(1)(i)(D) Air resources: air quality, visibility, and other air resource values.
	219.20(a)(2)(i)(F) An evaluation of the effects of air quality on ecological systems including water.
	219.20(a)(2)(i)(G) An estimation of current and foreseeable future Forest Service consumptive and non-consumptive water uses and the quantity and quality of water needed to support those uses and contribute to ecological sustainability.
294.13(a)(3) Diversity of plant and animal communities.	219.20(a)(2)(ii) Evaluations of species diversity must include, as appropriate, assessments of the risks to species viability and the identification of ecological conditions needed to maintain species viability over time.
	219.36 Ecological conditions: Components of the biological and physical environment that can affect the diversity of plant and animal communities, including species viability, and the productive capacity of ecological systems. These could include the abundance and distribution of aquatic and terrestrial habitats, roads and other structural developments, human uses, and invasive and exotic species.
294.13(a)(4) Habitat for threatened, endangered, proposed, candidate, and sensitive species and for those species dependent on large, undisturbed areas of land.	219.20(a)(2)(ii)(A) The viability of each species listed under the Endangered Species Act as threatened, endangered, candidate, and proposed species must be assessed. Individual species assessments must be used for these species.
	219.20(a)(2)(ii)(B) For all other species, including other species-at-risk and those species for which there is little information, a variety of approaches may be used, including individual species assessments and assessments of focal species or other indicators used as surrogates in the evaluation of ecological conditions needed to maintain species viability.
	219.36 Species-at-risk: Federally listed endangered, threatened, candidate, and proposed species and other species for which loss of viability, including reduction in distribution or abundance, is a concern within the plan area. Other species-at-risk may include sensitive species and state listed species. A species-at-risk also may be selected as a focal species.
294.13(a)(5) Primitive, semi-primitive non-motorized, and semi-primitive motorized classes of dispersed recreation.	Section 219.27(c) The consideration of recreation-related uses of land is addressed in the planning framework and within administratively designated areas that may include inventoried roadless areas and unroaded areas as well as motorized and non-motorized public use areas.
294.13(a)(6) Reference landscapes	219.20(a)(2)(i)(H) An identification of reference landscapes to provide for evaluation of the effects of actions.
294.13(a)(7) Landscape character and scenic integrity.	The consideration of landscapes and scenic integrity is within the development of landscape goals (section 219.12(b)) and consideration of issues.
294.13(a)(8) Traditional cultural properties and sacred sites.	219.21(a) For plan revisions, and to the extent the responsible official considers to be appropriate for plan amendments or site-specific decisions, the responsible official must develop or supplement the information and analyses related to the following:
	219.21(a)(1) Describe and analyze, as appropriate.
	219.21(a)(1)(i) Demographic trends; * * * cultural and American Indian tribe land settlement patterns; social and cultural history; * * * and other appropriate social and cultural information.

Proposed roadless rule	Final planning rule
294.13(a)(9) Other locally identified unique characteristics.	219.5 The responsible official, in his or her discretion, may choose the methods and determine the scope of information development and interpretation for an issue under consideration. A broad-scale assessment or a local analysis may be developed or supplemented if appropriate to the scope and scale of an issue. 219.5(b) Local analyses. Local analyses provide ecological, social, or economic information as deemed appropriate by the responsible official. Local analyses may cover watersheds, ecological units, and social and economic units, and may tier to or provide information to update a broad-scale assessment. Local analyses should provide the following, as appropriate. 219.5(b)(6) Recommendations for proposals (§ 219.6(a)) or identification of other issues (§ 219.4).

Other changes. The final rule clarifies that the revision process is completed when the responsible official signs a record of decision for a plan revision. Language to this effect was in paragraph (a) of the proposed rule and is found in the final rule in paragraph (e). Paragraph (b) lists steps to be taken to initiate the revision process. A number of clarifying changes were made in these steps. In paragraph (b)(2), issues were added to the list of information sources to be summarized. Paragraph (b)(2) in the proposed rule was separated into two parts, (b)(3) and (b)(4). Between them, they make it clear that the evaluations of sustainability presented in sections 219.20 and 219.21 must be performed on the current plan prior to revision, in order to assess the plan's contribution to sustainability.

Paragraph (b)(3) of the proposed rule is renumbered (b)(5) in the final rule. Based on response to public comments the text in (b)(3) of the proposed rule is moved to (b)(8) and revised to include the identification and evaluation of inventoried roadless areas and unroaded areas. A sentence requiring the determination of warranted protections of these areas during the revision process or at other appropriate times is added to this section to ensure that plan decisions address these areas. Paragraph (b)(4) of the proposed rule is renumbered (b)(6) in the final rule and the term ''priority'' is deleted to avoid the appearance of decisions being made at this early stage of the process. Regarding paragraph (b)(9) in the final rule, outcomes are to be projected for the 15-year the life of the plan, rather than 10 years, which is consistent with section 219.30.

Paragraphs (c) and (d) in the proposed rule are reorganized. As mentioned above, the meaning of revision is clarified. The only substantive change is the removal of specific requirements for the content of the Notice of Intent to revise plan decisions, and the requirement for a 45-day review period that were included in the proposed rule, paragraph (d). Because paragraph (e) in the final rule requires each plan revision to have an environmental impact statement that in turn requires an accompanying Notice of Intent, the content of the Notice of Intent would be governed by Forest Service NEPA procedures.

Paragraph (e) of the final rule was changed to be consistent with the intent of section 219.32, which prohibits the responsible official from approving a plan amendment until the conclusion of the objection process.

Paragraph (h) of the proposed rule required establishment of a revision schedule. This requirement is moved to section 219.35, as part of the transition process.

Proposed Section 219.10—Site-specific decisions and authorized uses of land. This section of the proposed rule described the basic steps and requirements that apply to planning for site-specific decisions. It also addressed the statutory requirement between permits, contracts, and other instruments be considered with the applicable land and resource management plan. In the final rule, this section has been renamed ''Site-specific decisions.''

Comment: Site-specific amendments. Many respondents felt that the proposed planning rule should clarify how amendments to approve site-specific decisions will apply to national forest and grassland plans. They asserted that inconsistencies between site-specific plans and national forest plans be clarified in the final rule. One organization recommended that the Forest Service develop and include specific criteria and guidelines pursuant to determining the appropriate action regarding site-specific decisions.

Response: Detailed guidance for addressing potential inconsistencies with the plan has been provided by Forest Service directives. The Department intends to streamline the planning process, and therefore does not believe there is a need to add more detailed information to the final planning regulation to address this concern.

Comment: Appropriateness of including site-specific decisions. Some respondents believed that the proposed planning rule should emphasize site-specific planning actions on national forests. Specifically, unique ecosystems contained within broad-scale analysis areas, they contended, needed to be addressed independently in forest planning efforts. Conversely, others believed the proposed planning rule should not address project-level planning. ''Requiring that project planning follow the same process as set forth for forest plans,'' one person asserted, ''will essentially mean an end to project planning, as it will be entirely too cumbersome, time-consuming, and expensive.''

Response: The Department believes that joining site-specific planning and forest planning into one shared planning framework will result in better project integration and an increased measure of efficiency, both in terms of the planning process and in achieving resource objectives. One framework will make it easier for the public to understand and participate in Forest Service planning at all levels. Sections of the framework applicable to site-specific planning have been specifically identified in the final rule to ensure that project planning will be conducted efficiently. The Department believes that this approach will encourage appropriate treatment of unique ecosystems through planning at an appropriate scale.

Comment: Exemptions. Some respondents felt that the proposed planning rule should provide specific criteria for granting exemptions to forest plans. An appeals process for exemption decisions, they asserted, should also be included. The proposed planning rule should include reasonable and negotiated schedules for compliance for non-exempted authorized uses, some contended.

Response: The NFMA requires that authorized uses be consistent with applicable plans. It provides for amendment of plans, but not for exemptions from them. The proposed

rule provided for an exemption process. The Department now believes that the same purposes can be achieved through an amendment or revision process that addresses issues related to ongoing authorized uses.

Other changes. Paragraph (a) of the proposed rule required the application of the planning requirements of the entire subpart to site-specific decisions. The final rule clarifies which sections are relevant to project decisions. Paragraph (a) of the proposed rule describes the options available to a responsible official if a proposed site-specific decision is not consistent with an applicable land and resource management plan. Similar guidance is currently found in the Forest Service directive system and is not included in the final rule.

Paragraph (b) of the proposed rule contained extensive directions on what to do with existing permits, contracts, and other instruments authorizing the use and occupancy of National Forest System lands when a plan is amended or revised, including an exemption process. Many people are distrustful of exemptions from plan decisions. NFMA explicitly provides for amendment of plans, but not for exemptions from them. The same purposes can be achieved through an amendment or revision process that addresses issues related to ongoing authorized uses. The paragraph is not included in the final rule. For such authorizations, paragraph (b) also requires consistency with existing plans at the time of their issuance. In the final rule, authorized uses of land are included as site-specific decisions. The title of this section was changed to reflect the relationship of authorizations and site-specific decisions.

Proposed Section 219.11—Monitoring and evaluation. This section of the proposed rule described the monitoring and evaluation requirements for site-specific actions and land and resource management plans. To more accurately reflect the use of monitoring information in developing appropriate adjustments to ongoing and planned actions, this section of the final rule is renamed ''Monitoring and evaluation for adaptive management''.

Comment: Monitoring for site-specific decisions. Many respondents felt that monitoring and evaluation is essential to assess the effectiveness of management activities. They recommended that the planning rule emphasize monitoring and evaluation, especially for site-specific decisions.

Response: The proposed rule emphasized the importance of monitoring in achieving sustainability. The final rule retains this emphasis. Monitoring and evaluation is a key component of adaptive management and dealing with uncertainty and risk in managing complex natural systems.

Comment: Monitoring and evaluation requirements. Many people were concerned with the flexibility of the monitoring and evaluation requirements, and some respondents believed that the proposed rule should include criteria for developing monitoring strategies.

Others felt that the proposed rule's requirements are too restrictive. ''Research demonstrates that determining sample size, sampling frequency, and even sampling methods is an adaptive process,'' one person wrote, ''therefore, including details on frequency of sampling and sampling protocols in the land and resource management plan will constrain the monitoring system such that effective monitoring will be less likely.''

Response: The Department does not believe there was unwarranted flexibility in the requirements for monitoring and evaluation in the proposed rule. There was a lack of clear descriptions of monitoring requirements in this section of the proposed rule. This section is revised to improve its clarity and readability.

For ecological sustainability, the final rule requires the monitoring strategy to include an assessment of the status and trend of selected physical and biological characteristics of ecosystem diversity (section 219.20(a)(1)). It must also assess the status and trends of ecological conditions known or suspected to support focal species and selected species-at-risk including population monitoring for some species. For social and economic sustainability, the final rule requires the monitoring strategy to include periodic review of national, regional, and local supply and demand for products, services, and values, with special consideration given to those uses, values, products, and services that the Forest Service is uniquely poised to provide.

The proposed rule required the monitoring strategy to include the frequency of measurement and sampling protocols. In the final rule, the selection of monitoring methods, as well as reasons for selection of the methodologies, must be documented as part of the monitoring strategy. In addition, the final rule provides that, unless required by the monitoring strategy, monitoring methods may be changed to reflect new information without plan amendment or revision. The Department does not believe that including details on frequency of sampling and sampling protocols in the monitoring strategy will constrain the monitoring system.

Comment: Specific monitoring requirements. One person contended, ''No level of monitoring, linked with current understanding of ecological systems, can provide the information necessary to determine, unequivocally, long-term sustainability.'' This person recommended the elimination of monitoring requirements for different management practices. Others suggested that the planning rule specifically address water quality monitoring methods in the proposed rule.

Response: The proposed rule does not provide for the information necessary to determine, unequivocally, long-term sustainability. Rather, it views monitoring and evaluation as a key component of adaptive management, enabling the Forest Service to deal with uncertainty and risk in managing complex natural systems. The final rule retains this emphasis on monitoring and evaluation.

The proposed rule did not specifically address methods for monitoring for water quality. The final rule requires assessment of the status and trend of selected physical and biological characteristics of ecosystem diversity (section 219.20(a)(1)). These include the diversity, abundance, and distribution of aquatic and riparian systems including streams, stream banks, coastal waters, estuaries, groundwater, lakes, wetlands, shorelines, riparian areas, and floodplains; stream channel morphology and condition, and flow regimes. The Department believes that methods for water resource monitoring are best documented in the monitoring strategy for a plan rather than included in the planning rule.

Comment: Quality and type of data collected. Some people felt that poor quality data will continue to impact the agency's ability to conduct adequate assessments. They recommended that the proposed rule require the collection of adequate monitoring data. Other respondents addressed concerns regarding the use of models as tools for monitoring. One person asserted that ''all models are inherently wrong and similarly the assumptions of models are always violated.'' Several people suggested that the planning rule recognize the limitations of planning models and emphasize proven monitoring methods, especially field monitoring.

Response: The primary focus of monitoring and evaluation is based upon on-the-ground results and measures of how well activities provide for sustainability and fulfill desired

conditions and objectives. In the final rule, each plan must contain a practicable, effective, and efficient monitoring strategy. Data and models used to address the monitoring requirements are to use the best science available. Under the adaptive approach to management described by the planning framework, many management activities are continually tested against planned and actual results. Appropriate adjustments can be made as new information becomes available.

Comment: Coordination among interested groups. Some recommended that the proposed rule be strengthened to ensure that monitoring efforts are coordinated with appropriate and interested parties. Some respondents specifically suggested that state and local government representatives be involved in monitoring activities. Various respondents expressed preferences about who should conduct or assist with monitoring efforts. Some people felt that monitoring activities should be restricted to qualified parties, while others recommended the inclusion of diverse interests in these activities.

Response: In the proposed rule, monitoring and evaluation is coordinated and, to the extent practicable, conducted jointly with other federal agencies, state, local, and tribal governments, scientific and academic communities, or other interested parties. In addition, the proposed rule required the responsible official to provide appropriate opportunities for the public to be involved in monitoring and evaluation. The final rule retains only the former provision as the latter provision was viewed as redundant.

The Department believes that monitoring is an important opportunity for the public to become directly involved with the conservation and stewardship of their national forests and grasslands. As in other steps of the planning framework, the expectation is that responsible officials will ensure opportunities are provided for appropriate collaboration.

Comment: Adequacy of funding to support the monitoring and evaluation requirements. Some respondents did not favor the requirement that the responsible official shall ensure that adequate funding is available for monitoring specifically required in project-level decision documents. Many people feared that inadequate funding could hinder the implementation of necessary projects. The Congressional budget process, they asserted, needs to be considered in developing the proposed rule. Other respondents, concerned about the adequacy of funding for monitoring, believed that the proposed rule's monitoring requirements will be excessively expensive and suggested that the rule emphasize that monitoring should not require significant additional costs.

Response: The Department believes that it is reasonable to expect the responsible official to make a fairly accurate prediction of future funding. First, the responsible official has the budget history of the unit and should be able to make a reasonable estimate on funding availability. Second, the responsible official has the flexibility to adjust the size and complexity of projects to reduce funding. Finally, the responsible official sets the stage for monitoring by documenting what is needed for specific projects in preliminary budget proposals. As noted by the Committee of Scientists, monitoring is an indispensable part of land and resource stewardship. To date, it has not been integrated into the planning and implementation process. Yet, including monitoring within the planning process may be the single most important shift that can happen in forest stewardship. The monitoring process creates the information necessary for future decisions, reduces the cost of future inventory analysis, and lessens the likelihood of management mistakes.

Comment: Linkage of project approval to monitoring funding. Many people voiced general support for the proposed rule's provisions requiring adequate funding for monitoring as a condition for project approval. Conversely, several other respondents felt that project approval should not be connected to funding for monitoring. These people asserted that this condition will hinder project implementation and conflicts with congressional budgetary authority. Focusing more on accountability, a few respondents suggested that the proposed rule require that responsible officials include their rationale for supporting expectations of adequate funding for monitoring in decision documents.

Response: The Department has retained language in the final rule concerning adequate funds for monitoring and evaluation of site-specific decisions. It is important to clarify that monitoring is not required for all site-specific projects. Where it is identified as important to understanding and ensuring sustainability, monitoring is considered as part of the project in the decision process.

Comment: Mechanisms for funding monitoring. Several respondents felt that it is unfair to require industrial interests to fund monitoring for projects that these interests propose. These people asserted that the proposed rule should not include such provisions. Other respondents recommended that the Forest Service seek legislative approval to establish a fund specifically for monitoring.

Response: The Department has retained language in the final rule concerning adequate funds for monitoring and evaluation of site-specific decisions. References were not made to industrial or non-industrial interests funding monitoring in the proposed or final rule. Monitoring is considered as part of the cost of doing the project where it is required.

Comments: Monitoring and evaluation of social and economic sustainability. Some respondents believed that the proposed rule has inadequate requirements for the evaluation of economic and social sustainability and recommended an expansion of the evaluation criteria in the final rule. Other respondents requested clarification of the requirements for review of national, regional, and local supply and demand for products, services, and values. One organization believed that the proposed rule should emphasize monitoring and evaluation processes that focus on the products, services, and values that both the Forest Service and local governments specifically provide. One person explicitly suggested that the Forest Service remove the term ''values'' from the proposed rule's items for consideration when monitoring for economic and social sustainability because it ''will allow a manager to use a variety of undefined and arbitrary 'values' to counteract a demand for products or services.'' Another person asked the Forest Service to require inventories of timber resources. Inventories of areas not suited for timber production, this person contended, are essential to gauge economic sustainability.

Response: The requirements for evaluating economic and social sustainability are identified in sections 219.5 and 219.21. Coordination of monitoring with partners is encouraged in section 219.11(e). The requirements for evaluating ecological, economic, and social sustainability have been increased in the final rule. The plan monitoring strategy must provide periodic reviews of national, regional, and local supply and demand for products, services, and values. It requires the responsible official to evaluate the effectiveness of information and analyses described in 219.21 (a) in providing reliable information regarding social and economic sustainability. This

provides an adaptive approach to address many of the concerns made by the respondents, including inventories of areas not suited for timber production and assessing supply and demand for products, services, and values.

Other changes. The monitoring and evaluation section of the final rule is reorganized to more clearly describe the strategy of monitoring plan decisions and characteristics of sustainability required by each plan. Each plan will contain a practicable, effective, and efficient monitoring strategy to evaluate sustainability by monitoring appropriate plan decisions and characteristics of sustainability. Section 219.5 provides that this type of information will be prepared within ''reasonable costs and in a timely manner.''

In the proposed rule paragraph (a), ''Monitoring and evaluation requirements,'' is reorganized and renamed ''Plan monitoring strategy'' to more accurately describe requirements. To simplify the presentation of required information, specific requirements for the use of monitoring information listed in paragraph (a) of the proposed rule are moved to paragraph (d), ''use of monitoring information,'' in the final rule. Monitoring methods described in paragraph (a) of the proposed rule are moved to paragraph (c) of the final rule to distinguish these requirements from the monitoring strategy, thus ensuring that appropriate adjustments in sampling frequencies and technical methods are implemented as monitoring progresses. The final rule clarifies that changes in monitoring methods are not plan decisions unless they are specifically required within the monitoring strategies described in a plan.

Paragraph (b) of the proposed rule, ''Coordination,'' described the need for collaboration and coordination in the development and implementation of monitoring programs. This paragraph is renumbered as paragraph (e) of the final rule, simplified, and renamed, ''Coordination of monitoring and evaluation.''

Paragraph (c) of the proposed rule, ''Project monitoring,'' is renamed ''Monitoring of site-specific actions'' and renumbered paragraph (b) in the final rule. The text of the paragraph is modified to specify that the responsible official must determine funding will be adequate to complete specifically described monitoring and evaluation before authorizing a site-specific action. The proposed rule is not specific regarding who is responsible for a determination of the appropriate funding prior to authorization of an action.

Paragraph (d) in the proposed rule, ''Monitoring and evaluation report,'' is moved to paragraph (f) in the final rule, ''A summary of the results of monitoring.'' Two items required for ''Identification of topics of general interest or concern,'' and ''A list of amendments, revisions and summaries of outcomes,'' are removed from this section in the final rule. These items are required by section 219.30, ''Plan documentation,'' and not necessary to repeat as a requirement in the monitoring and evaluation report.

Paragraphs (e) and (f), ''Monitoring of ecological, social, and economic sustainability'' in the proposed rule, are redrafted to follow the content of sections 219.20 and 219.21 of the final rule. They are incorporated into paragraph (a), ''Plan monitoring strategy,'' in the final rule. Because sustainability is the foundation for providing multiple uses of national forest and grasslands and monitoring activities are directed toward effective and efficient strategies to evaluate sustainability, it is appropriate that the characteristics of sustainability are described in conjunction with development of the plan monitoring strategy.

Collaborative Planning for Sustainability

In the proposed rule, sections 219.12 to 219.18 outlined the opportunities for the public and others to be actively engaged in the Forest Service's land management planning process. Collaboration with the public is one of the overriding themes of this rule. The agency recognizes that these are the ''people's lands'' and the public should be actively involved in their planning and management. These sections identify multiple opportunities for early and continuous involvement by the public.

Proposed Section 219.12—Collaboration and cooperatively developed landscape goals. This section detailed opportunities for the public to become involved in the development of landscape goals for national forests and grasslands. This section also detailed the role the responsible official will play in fostering an understanding of the purposes of the National Environmental Policy Act.

Comment: Resolving conflicts. Some people suggested that the proposed rule include guidelines regarding what should be involved in collaboration and how potential conflicts among different parties will be handled. The responsible official, one business contended, needs to ensure that the parties involved in collaboration are all interested in problem solving. ''The collaborative approach only works when you have a group that is interested in the solutions to the problems,'' wrote this business representative. ''It is a disaster when only part of the group wants to find solutions.'' One person addressed a different perceived shortcoming of collaboration. ''When the outcome of collaboration is different from what participants want,'' this person wrote, ''they often distrust the Forest Service and choose not to participate in future collaborate efforts.''

Response: Based on comments, section 219.12(a) of the final rule has been strengthened to provide that the ''responsible official'' must seek to ''actively engage'' the public and others in stewardship and planning of National Forest System lands. This change was made to emphasize the importance of actively working with the public and other agencies in forest planning. As noted in the Committee of Scientists Report, collaboration is about working together on issues of mutual concern in a manner that best fits the needs of people, place, and issues of concern.

In response to the comment on the commitment of parties to resolve problems, the final rule does not list any specific criteria for participation in the collaborative process. It is incumbent on the responsible official to identify the parties that will be ''actively engaged'' in the planning process. Section 219.12(a) of the final rule states that ''the responsible official shall consider the distinct roles, jurisdictions, and relationships of interested and affected governments, organizations, groups, and individuals.''

In regard to the comment on the Forest Service's role in the outcome of collaboration, the final rule provides that the ''responsible official shall provide early and frequent opportunities for people to participate openly and meaningfully in planning and has discretion to determine how to provide these opportunities.'' The overall intent of this rule is to have the Forest Service working together with others to cooperatively resolve natural resource issues.

Collaborative planning is not a stop-and-start activity but rather an ongoing effort, with varying levels of intensity. Its purpose is to reach out to communities and other stakeholders and build stewardship relationships needed to achieve an integrated landscape for planning to achieve goals of sustainability.

Comment: Discretionary authority. The discretionary authority of the Forest Service was another source of concern for many respondents. Specifically, the

proposed provision stating that, ''The responsible official has full discretion to determine how and to what extent to use the collaborative process'' evoked fears that the decision maker will be able to, in the words of one respondent, ''manipulate the process to achieve a predetermined target under the collaborative decisions label.'' To prevent this perceived abuse of discretionary power, several people recommended that the proposed planning rule require the responsible official to adhere to certain procedures such as documenting the rationale for choosing a given collaborative process and specifying when and how public input will be solicited. Others suggested that the proposed planning regulations retain current requirements for collaboration because they believe existing guidelines are more stringent in requiring opportunities for involvement with the public.

Response: The proposed rule provided that the responsible official has ''full discretion * * * to determine how and to what extent'' to use the collaborative processes outlined in certain sections of the proposed rule. Based on comments, this provision in the final rule has been changed in section 219.12(a) to provide the responsible official ''has discretion to determine how to provide these opportunities.'' The language ''to what extent'' has been removed from the final rule. The Department made this change to emphasize that the agency would use collaborative techniques in planning and stewardship of national forests and grasslands. Section 219.12(a) of the final rule recognizes that the responsible official may play several roles, such as leader, organizer, facilitator, or participant, in achieving collaboration.

In addition, discretion of the agency to consider ''cooperatively developed landscape goals'' has been modified in the final rule. Section 219.12(b)(3) provides that the responsible official ''shall consider'' (emphasis added) the cooperatively developed landscape goals as an issue for planning.

In regard to the comment on involvement with the public requirements, the rule does not conflict with any other public involvement processes the agency currently uses. In fact, the rule complements the existing public involvement requirements and increases opportunities for collaboration with the public throughout the planning process.

Comment: Implementation. The proposed planning rule, several believed, should clarify how collaborative planning goals relate to NEPA requirements and other goals proposed in the planning rule. In particular, the Forest Service must not substitute proposed collaborative processes for NEPA analysis, according to one organization. Clarification is also needed, one person wrote, regarding how the proposed collaborative planning process is different from the scoping process under NEPA. Other people suggested that the planning rule include recognition of the fact that collaboratively developed goals may not be consistent with other proposed goals such as ecological sustainability or emphasis on science. Some respondents agreed that collaborative planning is a laudable goal but, doubt that it will be realized. Citing a variety of past examples in which the Forest Service perceivably discounted local interests, several respondents wondered whether the Forest Service will actually adopt management directions developed through collaborative efforts. The Forest Service, others suggested, should disclose how public comments are used in forest planning.

Response: The proposed rule provided that the responsible official should use collaboration to develop landscape goals for ''ecological units'' that may be associated with National Forest System lands. In the final rule, this provision has been changed to using collaborative efforts ''to develop or propose landscape goals for areas that include National Forest System lands.'' The Department made this change to broaden the use of collaboratively developed landscape goals, not just to ecological units, but to all lands associated with the National Forest System. With respect to the comment on consistency of collaboratively developed landscape goals and ecological sustainability, Section 219.4 of the final rule provides that the responsible official should consider the extent to which addressing the issues relates to or provides an opportunity to contribute to the ''restoration or maintenance of ecological sustainability.''

In regard to landscape goals and NEPA, the language in section 219.12(b)(2) in the proposed rule has been retained in the final rule that recognized the importance and understanding of collaborative efforts and the National Environmental Policy Act. Section 219.12(b)(2) of the final rule explicitly recognizes the link between NEPA and collaborative planning. In section 219.5 of the final rule, the Department has clarified that ''the results from broad-scale assessments, local analyses, monitoring activities, and other studies that are not plan or site-specific decisions or proposals . . . are not subject to Forest Service NEPA procedures.'' The Department made this change to clarify that these landscape goals are broad landscape goals and not decisions requiring NEPA analysis. With respect to public comments during the planning process, all public comments are available for review. In regard to scoping and collaborative planning, the Department views collaborative planning as complementary to the NEPA scoping process. This is one more avenue for the agency to actively engage the public in land and resource planning.

In regard to the comments about the Forest Service adopting management directions developed in collaborative efforts, the overall intent and emphasis in the rule is for the Forest Service, along with other parties, to ''actively engage'' in a collaborative planning process to problem solve and identify mutual goals and interests. The collaborative process does not ensure what decision will be made by the responsible official.

Comment: Efficiency. Other people worried that the involvement of ''uninformed'' parties, single-issue organizations, or individuals or groups that cannot demonstrate a ''relevant relationship to the subject matter of a proposed plan'' results in an inefficient and laborious collaborative process. Similarly, some respondents asserted that if the Forest Service were required to consider all landscape goals initiated by various individuals and groups, decisionmaking would be slowed considerably. One organization cautioned, ''Decisions not incorporating all the conflicting goals will end up in litigation and further waste of taxpayer resources.''

Response: The proposed rule provided that collaboration in land and resource management planning ''enhances the ability of people to work together, build their capacity for stewardship, and achieve ecological, economic, and social sustainability.'' In section 219.12(a) of the final rule, the Department has strengthened this provision by stating ''to promote sustainability, the responsible official, must seek to actively engage the American public, interested organizations, private landowners, state, local, and Tribal governments, and other federal agencies in the stewardship of National Forest System Lands by providing early and frequent opportunities for people to participate openly and meaningfully in planning.'' The Department continues to believe that meaningful collaboration by the agency with all interested parties is the

best way to manage the national forest and grasslands. With respect to potential litigation and collaboratively developed landscape goals, section 219.4(b) of the final rule provides that the responsible official has the discretion to determine ''whether and to what extent an issue is appropriate for consideration.'' Litigation risks cannot be determined at this time. Collaboratively developed landscape goals are not subject to Forest Service NEPA procedures. Section 219.12(b)(3) of the final rule provides that cooperatively developed landscape goals are considered as an issue within the framework of planning. Section 219.12 of the final rule encourages an efficient and effective approach among interests to utilize limited human and financial resources that enable use of the latest technology and adoption of creative approaches to collaboration. It positions the agency in a leadership role and commits, as appropriate and practical, the responsible official to use creative collaborative approaches to supplement traditional NEPA processes.

Comment: Local Groups. Some people worried that Forest Supervisors may interpret the guidance in the proposed rule encouraging responsible officials to ''initiate or seek to join ongoing collaborative efforts to develop or propose landscape goals'' as a mandate to rely on local groups such as the Quincy Library Group. These people did not want the Forest Service to give special consideration to local collaborative groups and recommended that the proposed rule explicitly state that input from collaborative groups will be considered equally with input from other sources.

Response: The proposed rule provided that the responsible official and those involved in planning should invite and encourage others to engage in the collaborative development of landscape goals. Section 219.12(b)(1) of the final rule retains this language. The Department believes that this language is broad enough to ensure that one group does not have special consideration during the planning process. The intent of this section is to provide opportunities for all parties interested in forest planning to have an active role in the development of landscape goals and the collaborative process. As noted in the Committee of Scientists Report, collaborative planning is a shared process within which agencies cooperate with one another, work with other public and private organizations, and engage communities and citizens in envisioning and working toward a sustainable future of the national forests and grasslands.

Proposed Section 219.13—Coordination among federal agencies. This section of the proposed rule addressed coordination with other federal agencies in national forest and grassland planning and decisionmaking.

Comment: Sentiments were mixed among those respondents who specifically addressed coordination among federal agencies in national forest planning. While some supported the proposed planning rule's emphasis on participation and coordination of various federal agencies in forest planning, others were concerned that this focus on coordination might unduly influence other agencies' management actions.

Response: Section 219.13 of the proposed rule provided that the responsible official must provide ''early and continuous coordination'' for other interested or affected federal agencies to participate in identification of issues and formulation of proposed actions that may affect their programs. Section 219.13 of the final rule changed the language from ''continuous coordination'' to ''frequent coordination'' for working with other federal agencies. This change was made to clarify that there would be multiple opportunities for other federal agencies to participate in planning. Agencies are also urged to contribute to streamlined coordination of federal agency policies, resource management plans, or programs. Other federal agencies may further engage in a variety of tasks throughout the NEPA process, examples include: assist the agency in EA and EIS development, participate in public scoping, develop information and analyses in which they have special expertise, contribute staff and resource support, participate on interdisciplinary planning teams, and share information and data. These actions strengthen the final outcome for sound management of public resources.

In regard to the comment on the influence of the Forest Service to other agency management actions, section 219.12 of the final rule recognizes the distinct jurisdictions, policies and legislative mandates of the other federal agencies. This language was retained from the proposed regulations.

Proposed Section 219.14—Involvement of state and local governments. This section of the proposed rule described the involvement of state and local governments in the land and resource management planning and decisionmaking.

Comment: Suggestions for creating a useful collaboration process. Many people who responded to the proposed planning regulations support the idea that the Forest Service should actively collaborate with state and local governments. Forest Service officials, several respondents claimed, often require state and local governments to participate in planning in the same manner as members of the public rather than create specific outreach mechanisms for these governmental entities. These people offered a variety of suggestions for creating a useful collaboration process designed for state and local governments. These included requiring early and continuous coordination with state and local governments, consulting with state and local government officials, establishing state and local agencies as cooperating agencies under NEPA, obtaining the consensus of local governments before establishing topics of concern, providing documented rationale for the acceptance or rejection of local governmental concerns and suggestions, and establishing a process for intergovernmental information exchange.

Response: Section 219.14 of the proposed rule stated that the responsible official must provide opportunities for involvement of state and local governments in the planning process, including opportunities to participate in identification of topics of interest or concern related to the planning area. Based on comments, the Department has strengthened section 219.14 of the final rule to provide ''early and frequent'' opportunities for state and local governments to be actively involved in the planning process. In addition, the Department has also included language in section 219.14(b) of the final rule that acknowledges the need to coordinate resource management plans and programs with state and local governments. The final rule directs the continued building and fostering of these relationships.

Comment: Resolving conflict. Some respondents expressed reservations regarding the potential success of collaborative efforts with local and state governments. ''Local governments,'' one organization claims, ''may exercise their rights to maintain roads and trails counter to the desires of other interests within the 'collaborative' decisionmaking process—leading to additional conflict, litigation, and wasted resources.''

Response: Section 219.12(a) of the final rule provides that the responsible official should recognize the ''distinct roles, jurisdictions, and relationships of interested and affected governments, organizations, groups and individuals.'' The Forest Service will conduct

collaborative planning consistent with all applicable federal laws and regulations. This rule does not abrogate any federal responsibility to state government.

Comment: Discretionary authority. Although many respondents like the proposed planning rule's general emphasis on collaboration with state and local governments, several argued that the rule does not provide adequate assurance that these governments will be meaningfully involved in collaborative efforts. These people suggested that the Forest Service clarify how local and state governments will be engaged in forest planning by eliminating discretionary language and providing more specific direction in the proposed planning regulations. In particular, the proposed rule, one person suggested, should specify that municipalities and special districts would be consulted in forest planning. This respondent asserted that national forest management often affects water and sewage districts; thus, the Forest Service should involve these affected parties.

Response: Section 219.14 of the final rule identifies some of the key steps where state and local governments will be engaged in planning. State and local governments will be involved in the identification of issues as described in section 219.4(a) of the final rule. Further, section 219.14 in the final rule provides that the responsible official must provide early and frequent opportunities for state and local governments to participate in the planning process. This language strengthens the intent of the rule to have the agency work with state and local governments in planning. In addition the rule recognizes the need for the Forest Service and state and local governments to coordinate plans and programs.

Comment: Coordination. Several people suggested this is a critical component of effective collaboration procedures. Whether they want the Forest Service to retain existing requirements for coordination and review procedures or adopt the Bureau of Land Management's coordination requirements, these people generally believed that the rule must be explicit in requiring the Forest Service to strive for consistency among various plans and policies.

Response: Based on comments, the Department has added section 219.14(b) that recognizes the need for the Forest Service to coordinate resource management plans and programs with state and local governments. In addition, section 219.13 of the final rule describes the process for the Forest Service to coordinate their plans and programs with other federal agencies.

Proposed Section 219.15—Interaction with American Indian Tribes and Alaska Natives. This section of the proposed rule described the interaction with American Indian Tribes and Alaska Natives in National Forest System planning and decisionmaking.

Comment: Several people believed that the proposed planning rule should more explicitly recognize the Forest Service's responsibility to consult with American Indian tribes and Alaska Natives in forest planning. The proposed rule, one respondent asserted, must require that Forest Service decisions that may potentially impact tribal trust resources be specifically analyzed for compliance with fiduciary obligations of the United States. According to this respondent, ''More emphasis needs to be placed on the recommendations and desires of American Indian Tribes and Alaska Natives through the planning process because much of these lands involve aboriginal and ancestral lands of American Indian Tribes and Alaska Natives.'' The involvement of tribes and natives in forest planning was important for several respondents who do not think tribes should be treated in the same manner as members of the public or state agencies are treated. American Indian Tribes and Alaska Natives, these people asserted, must be partners in the initial, pre-scoping stages of Forest Service planning. Another respondent recommended that formal agreements be developed with tribal governments regarding planning priorities and joint management in areas where common boundaries exist.

Response: Section 219.15 of the final rule retains language from the proposed rule declaring that the Forest Service shares in the federal government's overall trust responsibilities and recognizes the government-to-government relationships with American Indian Tribes and Alaska Natives. It also retains language calling for collaboration in the early identification of treaty rights, treaty-protected resources, tribal trust resources, and other tribal consultation and participation. Section 219.3(c) of the final rule provides that American Indian tribes and Alaska Natives are to be engaged in an ''interdisciplinary, collaborative approach to planning.'' The Department believes that section 219.15(c) of the proposed rule, which is retained in the final rule, provides explicit language for the Forest Service to consult with American Indian tribes. There is no discretionary language in this section of the rule.

Comment: Tribal treaty requirements. In order to exercise their rights, one tribal organization asserted that the Forest Service must acknowledge the significant treaty requirements for protection of fish, wildlife, and plants. This organization claimed that national forest lands must be managed for a productive yield to allow tribes to exercise their preexisting legal rights.

Response: Section 219.15 of the final rule emphasizes identification of treaty rights and treaty and trust resources. The planning regulations provide for early and frequent communication among Forest Service personnel and American Indians and Alaska Natives. The planning rule does not modify tribal treaty requirements.

Proposed Section 219.16—Relationships with interested individuals and organizations. This section of the proposed rule addressed relationships with interested individuals and organizations in national forest and grassland planning and decisionmaking.

Comment: Encouraging public involvement. Many people who commented on the proposed planning rule agreed that public involvement should be an integral part of forest planning. However, respondents' perceptions varied as to whether the proposed planning regulations will, in effect, increase or decrease public involvement opportunities. Nevertheless, the Forest Service, they contended, should encourage more public involvement throughout the entire forest planning process to account for the needs and wants of different forest users. Some further suggested that the Forest Service clarify what incentives will be offered to encourage people to become involved early in the planning process.

Response: Section 219.16 of the proposed rule, which is retained in the final rule, described a process for the responsible official to involve the public in the planning process. Based on comments, the Department has strengthened this section in the final rule by describing specific steps where interested individuals and organizations will be ''actively'' engaged in planning. As noted in the Committee of Scientists Report, multiple mechanisms of public dialogue need to be devised to enhance the capacity of the American people to effectively engage in the planning process. The Committee of Scientists also wrote that planning must provide mechanisms for broad-based, vigorous, and ongoing opportunities for open public dialogue. These dialogues must

be open to any person, conducted in non-technical terms, and structured to accommodate differing schedules, capabilities, and interests. The Department continues to support a comprehensive public involvement process that has multiple opportunities for diverse interests to participate in the forest planning process. It recognizes that the planning process must be fair, meaningful, and open to persons with diverse opinions and values. Through this process, the responsible official must provide early and frequent opportunities for interested parties to participate, work together, and collaborate to improve understanding. A central function of the planning process aims at facilitating community building by providing opportunities for people to come together. There are not explicit incentives to participate in the collaborative planning process in the rule; however, the rule does ensure the opportunity for the agency and interested parties to collaboratively develop plans for our national forests and grasslands.

Comment: Reducing bias in decisionmaking. Many people asserted that when the Forest Service develops public outreach strategies, it must both engage a broad range of constituents in the collaborative process and equally consider the diverse interests of these constituents. Whether they believe the Forest Service may give undue preference to the views of local residents, logging companies, or environmentalists, many respondents strongly insisted that the proposed planning rule should reduce bias in decisionmaking by requiring equal outreach and consideration processes for different stakeholders. The Forest Service, some contended, must clarify how collaborative processes will weigh the input from different interests. Offering a specific suggestion for reducing bias in forest planning, one person proposed ''each national forest be governed by a set of elected officials who would be responsible to the public for the management of the national forests.'' By electing designated representatives, the Forest Service, this person contended, would be able to balance non-local interests and local interests as well as the interests of those who have the time and resources to participate and those that do not.

Response: The final rule retains the language in section 219.16 of the proposed regulations that recognized the need for engaging diverse interests in collaborative planning. As noted in the Committee of Scientists Report, collaborative planning must recognize the inevitability of legitimate, yet competing, values in National Forest System management. It must encourage divergent interests to collectively deal with their differences while pursuing shared goals for the national forests and grasslands. With respect to the comments on bias of planning, this rule provides a framework for developing plans that provides equal opportunities for all interested parties to participate in a meaningful and open collaborative planning process.

Comment: Involvement in collaborative planning. Some respondents offered specific ideas regarding who should or should not be involved in collaborative efforts. Several people argued that the Forest Service must focus collaboration at the local level and give priority consideration to local concerns. In the words of one person, the Forest Service should ''listen to the local people who use the forests.'' Others did not want corporate interests involved in collaboration; these ''faceless corporate giants,'' they perceived, used money and well-spoken representatives to unjustly influence the decisionmaking process. Similarly, some people suggested that paid lobbyists be excluded from the collaborative process as well. Some town meeting attendees felt that the Forest Service should clarify the difference between interested and affected parties in the collaboration process.

Response: The proposed rule provided language that would ''encourage participants to work collaboratively and directly with one another to improve understanding.'' In the final rule, the Department has expanded the language to ''encourage interested individuals and organizations to work collaboratively and directly with one another to improve understanding.'' In addition, section 219.16(b) of the final rule includes language that directs the responsible official to initiate a planning process that is ''fair, meaningful, and open to persons with diverse opinions.'' The Department believes that this language encompasses not only local citizens and interest groups, but a national constituency as well. The Department recognizes that all Americans own the national forests. The language in the final rule provides a framework for all interested parties to actively participate in the planning process. Section 219.12 of the final rule provides that the responsible official has the authority to consider the distinct roles, jurisdictions, and relationships in identifying participants in the collaborative process.

Comment: Outreach methods for soliciting public comment. Some respondents asserted that the Forest Service does not currently do enough to encourage involvement of all interested parties and should explore more creative ways of informing people about public involvement opportunities. Several people offered a variety of different suggestions for improving Forest Service outreach efforts. These included using different media to disseminate information such as the telephone, internet sites, industry-specific newsletters, radio programs, and bulletin boards, providing adequate notice and time for public comment opportunities, holding meetings within local communities and at convenient times, using neutral group facilitators and a small group format for public meetings, incorporating funding for outreach efforts in the annual Forest Service budget, maintaining databases of people who have expressed interest in forest planning, establishing partnerships with interested groups and individuals, and training Forest Service personnel in collaboration procedures. Regardless of which specific outreach method the Forest Service uses in planning, some respondents asked that the proposed rule include the NFMA mandate that requires the Forest Service to ''hold public meetings or comparable processes at locations that foster public participation in the review of such plans and revisions.''

Response: The proposed rule provided a framework to actively engage the public in a meaningful collaborative planning process. The Department continues to support that framework in the final rule. The Department acknowledges that the agency has multiple roles in the collaborative process including leader, organizer, facilitator, or participant. As noted in the Committee of Scientists Report, information is a key element in building an accessible planning process and an honest relationship between the agency and communities. The Committee further noted that where key information about the resources and management of national forests and grasslands is readily available in a range of locations and formats, open information policies could provide any interested individual the ability to understand, critique, and participate in planning processes. The Department agrees with the respondents about using different media and requires alternative formats for persons with disabilities when disseminating information to the public. The planning framework outlined in the final rule requires the Forest Service to use a variety of media to engage the public and tribal

governments in planning. The overall intent of the rule is to ''actively engage'' the public in collaborative planning. The rule emphasizes the need to utilize multiple methods to disseminate planning information.

In regard to the comment about holding public meetings on changes in the plans, the agency will continue to have public involvement in accordance with Forest Service NEPA procedures. There is no intent to eliminate these requirements from Forest Service planning.

Comment: Role as an educator. The Forest Service's role as an educator evoked comments from several respondents. These people believed the Forest Service should establish educational programs that provide the public with both environmental and forest management planning information. These people contended that informed stakeholders will help expedite the planning process and contribute to improved forest plans.

Response: The proposed rule acknowledged the multiple roles the agency has in the collaborative planning process. The final rule retains the multiple roles for the agency in the collaborative planning process. The Department acknowledges that the agency will not only be a convener, facilitator, leader, or participant, but will also be an educator. The principles in the final rule provide that ''planning meaningfully engages the American people in the stewardship of their national forests and grasslands.'' The Department believes that the agency will be learning along with the public in a collaborative planning process. One of the themes of the rule is to inform and educate the public about the Forest Service's planning process. Section 219.16(e) of the final rule provides for the Forest Service to work with parties to identify information needs for planning. The rule provides a framework for the Forest Service to be an educator as well as a participant in the planning process.

Proposed Section 219.17—Interaction with private landowners. This section of the proposed rule described the interaction with private landowners in National Forest System planning and decisionmaking.

Comment: Few people specifically addressed this section. One individual believed that the language of the proposed rule is too discretionary about requirements for engaging private landowners in forest planning.

Response: Section 219.17 of the final rule describes the process for the responsible official to engage private landowners in the planning process. The final rule provides that the Forest Service will work with adjacent landowners on issues of mutual concern that may affect them or management of National Forest System lands.

The final rule retains the requirement that the responsible official seek to engage private landowners. The information to be requested is expanded by the Department to include local knowledge, potential actions and partnerships, potential conditions and activities on National Forest System lands that may affect adjacent private lands, and issues relating to the plan area. The Department added these provisions to more clearly identify the types of information that were being sought from private landowners.

The Department has removed the phrase in the proposed regulations ''consideration of the pattern and distribution of land ownership in assessment and plan areas is critical'' in the final rule. The Department is confident that the language in the final rule adequately recognizes the interrelationships between private landowners and the Forest Service. The Department has added a new item (b) in the final rule that recognizes opportunities for partnerships between Forest Service and private landowners.

Proposed Section 219.18—Role of advisory groups and committees. This section of the proposed rule described the role of advisory committees and groups in land and resource management and decisionmaking. This section has been renamed in the final rule to ''Role of advisory committees.''

Comment: Influence of local interests. Many who wanted the proposed provision for advisory groups eliminated from the planning regulations claim that local commodity or economic interests will dominate these groups. Advisory groups composed of mostly local interests, these people argued, will likely advocate damaging land management practices rather than emphasizing the needs and desires of a broad spectrum of interests. In contrast, some respondents believed that local advisory groups are long overdue in national forest planning. They contended that these groups are needed to provide a means for rural communities to voice concerns about Forest Service projects that may have local impacts. In formalizing the concept of the proposed advisory groups, several people suggested that the Forest Service establish the groups as permanent committees accountable to the Forest Service leadership team.

Response: Because the Forest Service cannot carry out the mission of sustainability alone, the Committee of Scientists recommended that it develop both formal and informal collaborative structures that engage the broader community of interests and responsible governments to work together. Mechanisms for ensuring ongoing, long-term, broadly inclusive public relationships that build the capacity for creating effective collaborative stewardship are necessary for effective planning. It is the obligation of every line officer to build and maintain strong relationships with members of the public, interested organizations, other governments, and appropriate federal agencies. In some areas, especially when communities are spread over a large area, multiple, informal, localized networks can be a useful approach to maintaining these relationships. In other cases, especially when large landscape plans cross multiple social communities and other political boundaries, formal advisory boards may be the appropriate mechanism for ensuring full and representative participation. Section 219.18 of the final rule describes the roles and responsibilities of advisory committees in the planning process. The Department believes that Forest or Grassland Supervisors must have access to an advisory committee. These groups can raise issues and communicate other information vital to the planning process. They should not be construed to only allow local participation. Effective committees will respect all of those interested in or affected by national forest system management. The Department believes these groups will provide important information for planning and decisionmaking.

Comment: Composition of advisory groups. Whether they explicitly expressed support of or opposition to the proposed advisory groups, many respondents asked that the groups represent diverse interests. Fearing that these advisory groups may be biased toward one particular interest group, these people requested that specific guidance be included in the planning regulations directing the Forest Service to create well-balanced committees. Several respondents offered suggestions for the specific guidance they wanted included in the regulations. These included criteria for selection of committee members, requirements to ensure that groups represent diverse values, and clarification regarding the relationship between proposed advisory groups and the Federal Advisory Committee Act. In addition, some people made specific requests for the composition of these groups such as excluding vested financial interests

from participating and ensuring American Indian and Alaska Native representation.

Response: As noted by the Committee of Scientists, formal advisory boards, chartered under the Federal Advisory Committee Act and appointed by the Secretary of Agriculture, can provide an immediate, legitimate, representative, and predictable structure within which public dialogue can occur so that Forest Service relationships with a broad and dispersed community of interests can be efficiently maintained. The NFMA authorizes the formation of such advisory committees. These committees should contain representatives of the diversity of interested institutions and individuals, as currently required in the law. Thus, when they are the appropriate mechanism, the Forest Service should not hesitate to formally charter advisory boards at the individual national forest level or at the large landscape level, whichever provides the greatest opportunity to gain representative, structured, and focused public interactions through which the key issues can be most effectively and meaningfully addressed. Section 219.18 also provides for the Forest Service to utilize groups already established by other governmental agencies. In addition, the Department has added a new subparagraph (c) that provides for the responsible official to emphasize the importance of Forest Service participation in community based groups such as local watershed councils. With respect to the concern about providing specific guidance in the planning regulations, the rule provides only the framework for establishing advisory committees. It does not include specific language for representation on these advisory committees. This will be determined by the specific circumstances and needs for an advisory committee.

Ecological, Social, and Economic Sustainability

Section 219.19—Ecological, social, and economic sustainability. This section of the proposed rule described goals and priorities for sustainable management of National Forest System lands.

Comment: Definition of sustainability. The definition of sustainability evoked numerous concerns from the people responding to the proposed planning regulation. Some believed that the ambiguity of the term needed to be addressed. Because there are many different meanings of sustainability, its use created confusion throughout the proposed rule, according to one respondent. Many felt that the term should be used consistently throughout not only the proposed planning regulations but also the entire federal planning process.

Response: The Department agrees that the inconsistent use of sustainability in the proposed rule was a source of potential confusion. A definition of sustainability has been included in the final rule. Section 1(b)(3) defines sustainability as being composed of interdependent ecological, social, and economic elements, embodying the principles of multiple-use and sustained-yield without impairment to the productivity of the land, and meeting needs of the present generation without compromising the ability of future generations to meet their needs. Impairment of the productivity of the land means managing lands in a manner inconsistent with the requirements of ecological sustainability in section 219.20. It is beyond the scope of the current rule-making effort to propose consistent treatment of sustainability in all federal planning processes.

Comment: Implications for resource management. Some respondents were concerned that the adoption of the sustainability goal will prescribe activities on national forests that are considered nonrenewable. They felt the proposed rule should address how actions such as mining can be conducted in a sustainable manner. Others were equally concerned that their personal access to national forests will be limited by the proposed rule. They questioned what activities would be allowed and feared their activity on national forests might be excluded by the attempt to attain the goal of sustainability. These respondents sought reassurances that such a scenario will be avoided.

Response: The proposed rule did not specifically address how nonrenewable activities can be addressed in a sustainable manner or define activities that would be allowed on the national forests and grasslands. Likewise, these topics are not addressed in the final rule. Rather, the rule establishes a process for identifying, discussing, and, if appropriate, acting on issues that may emerge from a variety of sources (section 219.4).

The Department believes that this rule, and in particular, its sustainability requirements, will not by itself preclude mining activities. Analysis and collaboration conducted under the requirements of the rule, and following all applicable laws, will determine where mining is appropriate and what mitigation measures will be required. The rule's emphasis on ecosystem health, collaboration, and the role of science may very well result in the identification and implementation of effective and efficient mitigating measures applicable to mining operations, improving the overall sustainability of the use and development of what are commonly referred to as nonrenewable resources.

Comment: Assessing ecological, social, and economic sustainability. Many respondents felt the ecological, economic, and social benefits derived from national forest management must outweigh the costs involved. This is the standard by which the Forest Service should measure sustainability, according to these citizens. Others asserted that ecological, economic, and social sustainability should receive equal consideration in the proposed rule. Citing the fact that social and economic sciences are currently not being integrated into Forest Service decisions, they believed that this perceived oversight be corrected in the final planning rule. In addition, one respondent wanted the proposed rule to set a discrete time period over which sustainability is to be measured. Finally, other people applauded the choice of sustainability as the guiding principle of forest management because they believe such a goal is admirable and attainable.

Response: Requirements for achieving sustainability are found in sections 219.19, 219.20, and 219.21 of the final rule. The proposed rule did not specify how social and economic sustainability was to be achieved in relation to ecological sustainability. In the final rule, social and economic sustainability is achieved by providing a range of uses, products, services, and values, consistent with ecological sustainability (section 219.20(b)). The first priority for stewardship of the National Forest System, which is to maintain and restore ecological sustainability, is unchanged from the proposed rule. The Department believes that these requirements will result in ecological, economic, and social benefits that are greater than the costs. As noted by the Committee of Scientists, ''* * * ecological sustainability lays a necessary foundation for national forests and grasslands to contribute to the economic and social components of sustainability, making contributions to strong productive economies and creating opportunities for enduring human communities.''

In the proposed rule, information on ecological sustainability is collected at a variety of spatial and temporal scales. This requirement has been retained in the final rule. The proposed and final rules are silent on the temporal scale for

the evaluation of social and economic sustainability. The proposed rule acknowledges social and economic analyses being undertaken at various spatial scales. The final rule requires the planning process to include analyses for social and economic information at variable scales, including national, regional, and local scales. The responsible official has the authority to determine the appropriate scope and scale of analysis and data collection. In making this determination, the responsible official appropriately applies collaboration and the best available science.

As noted in section 219.20(a) of the final rule, the collection and analysis of information at a variety of spatial and temporal scales is important in providing for maintenance or restoration of ecosystems. These scales include geographic areas such as bioregions and watersheds, scales of biological organization such as communities and species, and scales of time ranging from months to centuries. For this reason, the Department has not adopted a discrete time period over which sustainability is to be measured.

The Department agrees that sustainability is the guiding principle of National Forest System management. This section of the proposed rule referred to sustainability as the overall goal for the management of National Forest System land. The Department has retained this reference in the final rule.

Comment: Linkage between ecological, economic, and social sustainability. Some people believed that the Forest Service should emphasize the link among the three types of sustainability outlined in the proposed planning regulations. Others sought clarification regarding the link between ecological and socioeconomic sustainability, as well as what role extraction industries will play in achieving ecological sustainability.

Response: The Department agrees that the linkage between ecological, social and economic sustainability was not sufficiently emphasized in the proposed rule. Language was added to the final rule to rectify this insufficiency. In the final rule, sustainability, composed of interdependent ecological, social, and economic elements, embodies the MUSYA without impairment to the productivity of the land and is the overall goal of management of the National Forest System. The first priority for stewardship of the national forests and grasslands is to maintain or restore ecological sustainability to provide a sustainable flow of uses, values, products, and services from these lands.

To contribute to economic and social sustainability, the responsible official involves interested and affected people in planning for National Forest System lands (§ 219.12–219.18), provides for the development and consideration of relevant social and economic information and analyses, and a range of uses, values, products, and services. Plan decisions contribute to social and economic sustainability by providing a range of uses, products, services, and values, consistent with ecological sustainability (section 219.21(b)).

The proposed rule did not define a specific role for extractive industries in achieving ecological sustainability. Nor has such a role been defined in the final rule. The final rule does include provisions such as § 219.21(a)(1)(iii) that require the responsible official to consider opportunities to provide social and economic benefits to communities through natural resource restoration strategies. The rule establishes a process for identifying, discussing, and, if appropriate, acting on issues that may emerge from a variety of sources (section 219.4). The Department believes that the role of extractive industries in achieving ecological sustainability is most appropriately addressed using this process.

The final rule would not, by itself, result in environmental consequences. Rather, adverse effects or benefits would only be realized when the new rule is applied on national forests and grasslands through forest and project level planning. Because application of the rule requires consideration of site-specific information that pertains to the planning unit, it is not possible, from a programmatic viewpoint, to determine short or long-term environmental, social, or economic consequences of the final rule. The Department believes that this rule, and in particular, its sustainability requirements, will not by itself preclude mining or other economic activities. Analysis and collaboration conducted under the requirements of the rule, and following all applicable laws, will determine where mining is appropriate and what mitigation measures will be required. The rule's emphasis on ecosystem health, collaboration, and the role of science may very well result in the identification and implementation of effective and efficient mitigating measures applicable to mining operations, improving the overall sustainability of the use and development of what are commonly referred to as nonrenewable resources. As noted above, mitigation of the effects of mining activities through the application of the planning rule may reduce the overall environmental impacts of mining within national forests and grasslands.

Similarly, any short-term or long-term effects on the availability of forest products and services would occur on a forest-by-forest basis once forest plans were revised under the final rule. For this reason, quantifiable impacts to the availability of forest products and services cannot be determined at this time. The Forest Service speculates that by implementing the rule, the Forest Service will put greater emphasis on maintaining and restoring ecosystem health in order to promote sustainable forest use. As a result, it is possible that there could be less timber volume made available for commodity purposes in the future. At the same time, more timber volume could be made available as a result of efforts to increase timber harvest for stewardship purposes.

Comment: Adoption of Montreal Criteria: One respondent recommended that the rule be used to build greater consistency between sustainable forest management, including national commitments to sustainable forestry and the Forest Service Natural Resource Agenda, and national forest planning. Adoption of the seven Montreal Process Criteria within the regulation was specifically recommended to provide a framework for measuring and organizing information and performance related to sustainability.

Response: The Committee of Scientists, while acknowledging their potential usefulness, had a number of qualifications about the use of criteria and indicators for gauging sustainability on the National Forest System lands. First, the Committee found that they might not be sufficient, by themselves, to gauge ecological sustainability. As an example, the ''maintenance of productive capacity of forest ecosystems'' does not appear to include the amount of dead trees for wildlife habitat as an indicator. Second, the Committee believed that the criteria and indicators are generally non-spatial and seem to lack a landscape view. They focus on measuring acres in certain condition without the aggregation needed for judgments about areas. The lack of integrative concepts on the use of the criteria and indicators may make it difficult to use them to make overall judgments. Finally, the Committee felt that they could consume much of the agency's resources for inventorying and monitoring, leaving little to other important measures of sustainability.

The Department is guided by the qualifications of the Committee of Scientists concerning the use of criteria and indicators for gauging sustainability

on National Forest System lands. The specific framework for illustrating the linkage between sustainability and the Montreal Criterion are under development and are expected to be included in Forest Service directives as they become available.

Other changes: The final rule refers to sustainability as the embodiment of the principles of multiple-use and sustained-yield without impairment to the productivity of the land. This language is not contained in the proposed rule. The Department has included this language to more clearly describe the linkage of sustainability to the requirements of the MUSYA. The phrase ''without impairment to the productivity of the land'' in this statute is key in defining both multiple-use and sustained-yield and is acknowledged in the final rule.

Other changes in the final rule are made to eliminate redundancy, improve clarity, or incorporate changed terminology. The proposed rule required that management be consistent with laws and regulations. This reference is removed from the final rule because this is a requirement of all actions by each civil servant and not unique to management of national forests or grasslands. The proposed rule referred to sustainability as the overall goal of National Forest System management and this reference is retained in the final rule. Similar language is found in section 219.1(b) of the final rule. Finally, section 219.1(b)(3) of the proposed rule made reference to the interdependent elements of sustainability. This reference is included in this section of the final rule to emphasize the importance of consideration of the interdependent nature of ecological, social, and economic sustainability.

Section 219.20—Ecological sustainability. This section of the proposed rule described the key principles and desired outcomes for ecological sustainability.

Comment: The definition of ecological sustainability. Some felt that the proposed regulations should include humans and their impacts on the environment in the definition. Of those respondents that use the terms ecological sustainability and forest health interchangeably, some suggested the proposed rule clarify the definition of forest health.

Response: The Department believes that humans and their impacts on the environment are included in the definition of ecological sustainability. The Department also believes that forest health is also encompassed in this definition. Ecological sustainability is defined in section 219.36 of the final rule as the maintenance or restoration of the composition, structure, and processes of ecosystems including the diversity of plant and animal communities and the productive capacity of ecological systems.

Comment: Ecological sustainability and discretionary language. Numerous people cited the use of discretionary language, such as ''may'' and ''should,'' as a serious flaw in the proposed regulations. These individuals would like to see the inclusion of imperative language, such as ''shall'' and ''must,'' to ensure that ecological sustainability is achieved.

Response: The Department has retained the discretionary language in the final rule. It does not believe that the use of discretionary language in referring to ecological sustainability is a serious flaw. The planning rule is intended to provide numerous opportunities to reach well-reasoned and sustainable solutions to natural resource issues. Discretionary authority often provides flexible and appropriate solutions to complex natural resource issues among competing interests. It has been the experience of the Forest Service and others that the net result of inflexible policies often results in poorer solutions.

Comment: Specific guidelines for ecological sustainability. Several respondents that supported the goal of ecological sustainability felt that the proposed planning rule lacks specific guidelines. They requested that the Forest Service include clear, direct standards and goals for achieving ecological sustainability in the final rule. Others asserted that ecosystem recovery should occur before the maintenance of sustainability is undertaken. A few respondents urged the Forest Service to recognize the link between timber harvest and ecological sustainability. They were adamant that fuel loads and overstocked forests pose a more serious threat to forest health than logging does.

Response: The Department agrees that the proposed rule did not include clear, direct standards and goals for achieving ecological sustainability. This section of the final rule was revised in response to this concern. Requirements for achieving ecological sustainability are found in section 219.20(b) of the final rule.

The proposed rule did not require ecosystem recovery to occur before the maintenance of sustainability is undertaken. Nor did it recognize the link between timber harvest and ecological sustainability. The Department did not include either of these issues in the final rule. The rule does establish a process for identifying, discussing, and, if appropriate, acting on issues that may emerge from a variety of sources (section 219.4). The Department believes that these issues are most appropriately addressed using this process.

Finally, as noted above, the Department believes that the definition of ecological sustainability encompasses forest health.

Comment: Ecological sustainability as the over-reaching goal of forest planning. Some respondents cited the loss of jobs and an increase of appeals and litigation as reasons not to support the goal of ecological sustainability. One respondent asserted that ecological sustainability is unattainable under the current ecological circumstances. Invasive species such as cheatgrass have irretrievably altered the landscape, this person contended, precluding the possibility of attaining ecological sustainability. Others believed the goal of ecological sustainability is too nebulous a concept to use as a standard upon which to judge forest health.

Response: The Department does not believe that the goal of ecological sustainability will result in a loss of jobs or an increase in appeals and litigation. As noted by the Committee of Scientists, ''* * * ecological sustainability lays a necessary foundation for National Forests and Grasslands to contribute to the economic and social components of sustainability, making contributions to strong productive economies and creating opportunities for enduring human communities.'' The intent of the objection process (section 219.32) is to encourage resolution of issues before decisions are made. In the long run, the objection process is expected to resolve many potential conflicts, reducing litigation.

The proposed rule stated that where ecosystems have been altered to the extent that it is not possible to return them to conditions within the historical range, other scientifically credible approaches may be used to maintain or restore ecological sustainability. The final rule states that where it is not practicable to make measurable progress toward conditions within the expected range of variability, plan decisions may provide for ecosystem composition and structure outside the expected range of variability. Other independently peer-reviewed methods must be used to provide for ecosystem diversity. The Department believes this language in the final rule provides for ecological sustainability where circumstances, such as invasive species, have irretrievably altered the landscape.

Finally, as noted above, the Department changed this section to provide clear, direct standards and goals for achieving ecological sustainability.

Comment: The maintenance of the composition, structure, and processes of ecosystems. Some respondents asserted that the discretionary and nebulous nature of this mandate will lead to arbitrary and inconsistent decisions. Others believed that the proposed rule does not address the physical characteristics of ecosystems. According to these individuals, the Forest Service should emphasize soil, water, and air as much as biological factors when conducting ecological analyses.

Response: As noted above, the Department changed this section to provide clear, direct standards and goals for achieving ecological sustainability. As also noted above, the use of discretionary language in referring to ecological sustainability is appropriate.

The proposed rule required ecological information and analyses on the following physical characteristics: soil conditions, air and water quality, stream channel morphology, and instream flows. The final rule requires evaluations of soil resources, including soil productivity, physical, chemical and biological properties, soil loss, and compaction, and air resources, including air quality, visibility, and other air resource values. The final rule also requires an evaluation of the effects of air quality in ecological systems, including water, and an estimate of current and foreseeable future Forest Service consumptive and non-consumptive water uses and the quantity and quality of water needed to support those uses and contribute to ecological sustainability. The Department believes the requirements in the final rule appropriately address the physical characteristics of ecological sustainability.

Comment: Value of medicinal plants. The extraction of trees, while fostering immediate economic gains, may be destroying valuable plants, according to one respondent. Claiming that medicinal plants have the potential to not only generate income but also save lives, this respondent requested that the value of medicinal plants growing in national forests be considered in the final rule.

Response: Medicinal plants will continue to be an important consideration in the management of national forests and grasslands. The procedures for the identification of functioning ecosystems described in section 219.5 and the use of the issue identification process in section 219.4 ensure appropriate attention and management action is directed toward medicinal plants on National Forest System lands.

Comment: Pre-European settlement conditions. A few respondents supported the concept of pre-European settlement conditions as it is presented in the proposed regulations. They felt that using such a standard would help the Forest Service avoid past mistakes. A majority of respondents, however, presented numerous and diverse reasons for not supporting these concepts. Many believed that the goal of pre-European settlement conditions was unattainable. One individual cited airplane over-flights as an example of the impossibility of returning forests to the pre-European settlement conditions. Some respondents requested the Forest Service clarify exactly what pre-European settlement conditions are. Other respondents feared that this benchmark would be used to restrict human access to national forests. One respondent believed that adopting the pre-European settlement standard will shift forest product demands onto less resilient forests around the world. Such a shift will impact global biodiversity according to this respondent. Others believed that the goal of pre-European settlement conditions contradicts the letter and the spirit of the MUSYA. The resource needs of the nation today cannot be met, they asserted, if such a standard is adopted.

Response: The Department agrees that a goal of pre-European settlement conditions is unattainable. Given climate change, land-use change, and changing landscape conditions, the use of the conditions of pre-European settlement as a reference was not realistic for many environments. For this reason, the Department has eliminated the use of this terminology from the final rule.

As discussed for more fully below, the final rule partially relies on information from the historical natural disturbance regimes of ecosystems, but does not purport to return ecosystems to the dynamics of pre-European settlement. Rather, these requirements use the regimes of natural disturbances of the current climatic period to estimate an expected range of variability for characteristics of ecosystem composition and structure that can be used in planning at broad spatial scales across major ecological types.

Comment: Historical range of variability. Some respondents believed that a lack of information makes a definitive determination of historical range of variability unattainable. They felt that the Forest Service should clearly define what the historical range of variability means and how it will be applied. Others felt the term is too discretionary and will allow the Forest Service to make arbitrary management decisions. Some felt that the proposed planning regulations should account for potential misuse of the historical range of variability. They asserted that the concept can be exploited to support extractive activities that do not necessarily support ecosystem sustainability. Various respondents suggested that the final planning rule provide specific guidance for instances when the historical range of variability for a site is not clearly defined. Because they believed that the determination of historical range of variability for specific sites could take years to complete, several individuals requested that the proposed planning regulations require the implementation of interim protection guidelines for areas of high ecological value. Some respondents wished to see the incorporation of heritage research in the ecosystem management process. They believed such research was essential to determine the historical range of variability. Some respondents supported the benchmark of historical range of variability to measure ecosystem integrity.

Response: The proposed rule described the concept of ecological integrity and the historical range of variability, which, in turn, used pre-European settlement as a reference period. Considering variable and changing climate, land-use, and landscape conditions, the approach in the proposed rule was changed.

The proposed rule contained important, essential ideas about natural history and disturbances. It is well accepted in the scientific community that the ecosystems and species of today are a product of historical disturbance regimes as well as current environments. It is also widely accepted that disturbances play a major role in creating ecological diversity and productivity. The current species are adapted to recent climatic and disturbance regimes of landscapes and contain a long record of environmental history in their genetic structure. Consequently, one cannot ignore the role of the past when attempting to sustain ecological conditions into the future, even when that future environment will be different.

Human desires, however, need to be in sync with ecological capacities. When those desires include maintaining and enhancing current biological diversity, or slowing the rate of its change, then information from the past must be used to help sustain or

transition ecosystems into future states at rates that are socially acceptable. The role of ecosystem management in this process is to manage change in ecosystems such that the rate and direction of change is consistent with ecological potential and social desires. It is extremely difficult to establish desired conditions for species and complex ecosystems without some reference to how they have functioned in the past. When used carefully and in a limited way, historical information can play an important role in sustaining desired ecosystems into the future.

The final rule uses information from the historical natural disturbance regimes of ecosystems, but does not purport to return ecosystems to the dynamics of pre-European settlement. Rather, these requirements use the regimes of natural disturbances of the current climatic period to estimate an expected range of variability for characteristics of ecosystem composition and structure. The expected range of variability for characteristics of ecosystem composition and structure in a landscape or region can be estimated from general knowledge of disturbance frequencies, severities, and rates of vegetation development.

The Department believes that providing ecological conditions within the expected range of variability across all major ecological types will reduce threats and risks to the sustainability of native and desired non-native species and ecosystems on national forests and grasslands. Many of the current threats to species and ecosystems on these lands have their origin in accelerated rates and intensities of human activities such as intensive management for timber production and overgrazing or reduced rates of disturbance from fire suppression that have altered the abundance, structure and composition of ecosystems at multiple spatial scales. Providing ecological conditions within the expected range of variability will also contribute to ecosystem productivity and diversity and options for sustaining social, and economic goods and services such as water, forage, and wood and recreation. This requirement is intended to be set at relatively broad province scales and for major ecological types that correspond to potential natural vegetation series.

The proposed rule did not include interim protection guidelines for areas of high ecological value; nor has the Department included such interim guidelines in the final rule. The Department believes that, unlike the historic range of variability, the estimation of the expected range of variability can be accomplished without the need to provide interim protection for areas of high ecological value.

The use of the expected range of variability is not intended to preclude commercial timber harvest. Any short-term or long-term effects on the availability of forest products and services would occur on a forest-by-forest basis once forest plans were revised under the final rule. For this reason, quantifiable impacts to the availability of forest products and services cannot be determined at this time.

Comment: Reference landscapes. Some citizens suggested that the final planning rule clarify the process of identifying reference landscapes. They felt specific guidelines would help define which landscapes will be deemed suitable for such a designation. A few respondents questioned the possibility of finding suitable areas for reference landscape designation. They believed the Forest Service will be hard pressed to find large areas affected by natural disturbance regimes yet still undisturbed by human activity. One individual believed the establishment of reference landscapes is a usurpation of Congressional authority. Since these landscapes are to be set aside in perpetuity as benchmarks, this individual asserted that such an action is a de facto wilderness designation. This respondent felt that such a designation can be exploited to amass large land areas and then exclude access to these lands.

Response: The Committee of Scientists noted that managers need some guidance about the amount of environmental variation that is acceptable and is within the biota's ability to respond adaptively to it. Estimates of an acceptable range of variability in composition, structures, and processes provide reference distributions or conditions against which competing management scenarios are compared. The conditions found in reference landscapes may be the ''coarse filters'' within which the current physical landscape and biota evolved. To the degree that future management scenarios can achieve the conditions in reference landscapes, the more likely it is that the ''coarse filter'' will achieve the objectives for ecological sustainability and the less likely that ''fine-filter'' strategies will be needed for individual species.

The Department has not included specific guidelines in the final rule to define which landscapes will be deemed suitable for such a designation. Reference landscapes are rarely uniform ''snapshots'' of the past. Considerable variability caused by climate change and disturbance by fire, flood, insects, disease, and other natural factors typically affects reference conditions. Reference conditions vary within an ecosystem over time, and the proportions of old-growth forests or early seral conditions are never in a true equilibrium state. These conditions also vary between ecosystems.

The Department agrees that it will be difficult finding suitable areas for reference landscape designation. In general, it is easier to reconstruct disturbance regimes (e.g., fire frequency and intensity) than the effect of those regimes, so reference landscapes are rarely precise. Nevertheless, they play a key role in evaluating the ''coarse filter'' proposed by future management plans.

Finally, the establishment of reference landscapes is not a usurpation of Congressional authority. The final rule does not set aside reference landscapes in perpetuity as benchmarks.

Comment: Scientific foundation of ecosystem integrity. Some respondents felt that the concept of ecosystem integrity cannot currently be scientifically gauged. These respondents believed that the lack of scientific measurement standards has led to the unfair labeling of road building and logging activity as indicators of ecosystem integrity. Such a designation, they asserted, leads to the prohibition of road building and logging. One respondent, citing the complexity and breadth of ecosystem processes, requested clarification on the definition of the concept of a ''complete'' ecosystem. Another respondent asserted that, ''Grouping species based on particular value judgments and then using these groupings to evaluate * * * integrity introduces enormous bias into the evaluation.''

Response: The proposed rule defined integrity as the completeness of an ecosystem, at multiple spatial and temporal scales, that maintains its characteristic diversity of biological and physical components, spatial patterns, structure, and functional processes within its approximate range of historic variability. These processes include disturbance regimes, nutrient cycling, hydrologic functions, vegetation succession, and species adaptation and evolution. Ecosystems with integrity are resilient and sustainable in the presence of human management actions and natural disturbances. Ecological integrity is an intuitively appealing concept that is well established in the ecological literature, but its definition is contentious. This contention stems from the various (and often conflicting) perspectives that include: Structural

(keep the parts), functional (maintain ecosystem functions and processes), and human uses (accommodating the derivation of goods and services from ecosystems for humans).

Ecological integrity was defined in the Committee of Scientists' report as the state of being unimpaired and sound, and the quality or condition of being whole or complete. Furthermore, the Committee of Scientists recommended that a suite of indicators be used to evaluate integrity that includes species composition, ecosystem composition, ecosystem processes, and appropriate reference distributions against which to judge management decisions. This definition has its basis in the structural and functional perspectives defined above and was put forth as a way to encapsulate the state of the ecosystem in the absence of social and economic considerations.

There are a number of potential concerns tied to directly using ecological integrity in the proposed rule, including: the lack of an unambiguous definition in the literature; a tendency to be viewed as a single state of absolute condition rather than recognizing the dynamic nature of ecosystems; an inclination to link integrity measures to goals (e.g., the historical range of variability of pre-European conditions); and a redundancy with the concept of ecological sustainability.

There is a relatively rich literature on the conceptual aspects of ecological integrity. What is lacking is a generally accepted set of scientific norms regarding integrity measures. For this reason, actual applications of ecological integrity in a management context are rare in the literature, making it difficult to use the concept of ecological integrity in natural resource planning. Some applications of integrity have focused on a single ecosystem stated as having integrity. The concept does not lend itself to classify each system as having or not having integrity. This approach fails to recognize the dynamic nature of ecosystems.

The context for understanding the ecological integrity of any specific landscape must be couched in terms of the goals and expectations for the landscape. This translates, in part, to defining some standard against which integrity will be measured. Often this standard is based on some ecological condition like the historic range of variability as reflected under pre-European settlement conditions. Defining ecological integrity to be within the historic range of variability and requiring that ecological conditions should be maintained within that range does not capture the full meaning of integrity as described in the literature. Linking only to historical conditions, without framing the current and probable future climatic system, is not supported by scientific understanding of environmental change.

The proposed rule stated that ''to achieve ecological sustainability, it is necessary to maintain and restore ecological integrity.'' The Department found it difficult to separate ecological integrity from the broader notion of ecological sustainability. Ecological integrity and ecological sustainability are intended to reflect the overall state of an ecosystem as a whole.

The language ''ecological integrity'' is not included in the final rule. Integrity is viewed as a component of ecological sustainability along with other system attributes like resiliency, health, and vitality. The Department concluded that the explicit application of ecological integrity as an analysis or performance requirement in the final rule was unnecessary given the rule's focus on ecological sustainability. The Department believes the concept of ecological integrity is within the concept of sustainability as described by the rule.

Comment: Indicators of ecosystem integrity. One respondent wondered how the Forest Service will choose specific indicators to gauge the integrity of ecosystems when, by definition, ecosystems are constantly changing, dynamic systems. This person also questioned how, and by whom, good and bad effects will be determined. Some respondents supported the inclusion of water quality and water flow regimes as indicators of ecosystem integrity in the final rule.

Response: As noted above, the Department found that ecological integrity indicators are an unnecessary addition to the evaluation of sustainability.

As also noted above, the final rule requires the estimation of an expected range of variability for characteristics of ecosystem composition and structure that can be used as planning objectives at broad spatial scales across major ecological types. The expected range of variability in a landscape or region can be estimated from general knowledge of disturbance frequencies, severities and rates of vegetation development.

With respect to the integrity of ecosystems, neither the proposed nor final rule described how good and bad effects will be determined. The requirements for ecosystem diversity (section 219.20(b)(1)) use the expected range of variability to provide for the maintenance and restoration of the characteristics of ecosystem composition and structure.

The final rule provides for an evaluation of ecological sustainability, which includes characteristics of ecosystem and species diversity (section 219.20(a)). The characteristics to be evaluated include water quality and flow regimes.

Comment: Species definitions. While some respondents sought general clarification of focal species, others suggested the final rule specifically elucidate the distinction between focal species and management indicator species. Another respondent questioned whether introduced species, such as the wolf, can be considered under the definition of species-at-risk. In addition, certain respondents felt the proposed definitions of focal species and species-at-risk create a statutory conflict with endangered and threatened species under the Endangered Species Act. Some respondents wonder whether the Forest Service or the Fish and Wildlife Service will designate focal species and species-at-risk. One individual believed the definition of species-at-risk should be expanded to include any species identified by conservation organizations or state natural heritage programs as imperiled. Another felt any documented declining species should be designated. Conversely, numerous respondents supported the concept of focal species, species-at-risk, and demand species as they are currently defined in the proposed rule.

Response: In the current rule, management indicator species (MIS) are selected in order to estimate the effects of management actions on fish and wildlife populations. MIS include, where appropriate, threatened and endangered species; species with special habitat needs that may be significantly influenced by planned management programs; species commonly hunted, fished, or trapped; non-game species of special interest; and species whose population changes are believed to indicate the effects of management activities on other species of selected major biological communities or on water quality.

In the proposed rule, focal species are selected for use as surrogate measures in the assessment of ecological integrity, including the diversity of native and desired non-native species. Their status and time trend provide insights to the integrity of the larger ecological system to which they belong. Species selected would represent the range of environments within the assessment area, and would serve an umbrella function, or play key roles in maintaining community structure or

processes. Focal species have been retained in the final rule.

In the proposed rule, species-at-risk were defined as endangered, threatened, candidate, proposed, and sensitive species, and species for which significant local reductions in distribution or density are concerns. The final rule defines species-at-risk as federally listed endangered, threatened, candidate, and proposed species and other species for which loss of viability, including reduction in distribution or abundance, is a concern. In the final rule, an introduced species could be designated as a species-at-risk.

The Department does not believe the definitions of focal species and species-at-risk in the proposed rule created a statutory conflict with endangered and threatened species under the Endangered Species Act. In addition, the responsible official designates focal species and those species-at-risk not designated as threatened, endangered, candidate, and proposed species by the U.S. Fish and Wildlife Service in the proposed rule. This language is retained in the final rule (section 219.20(a)).

The proposed rule did not require inclusion of species listed by state natural heritage programs or conservation organizations as species-at-risk. The Department believed that the state natural heritage programs or conservation organizations listed species for reasons other than viability concerns. In defining species-at-risk, the Department sought a grouping of species based solely on viability concerns. For this reason, the Department inserted language in the final rule that species-at-risk include other species for which loss of viability, including reduction in distribution or abundance, is a concern within the plan area. These other species-at-risk may include sensitive species and state listed species. Viability is the criterion which determines what is included as a species-at-risk.

Comment: Game species. Some respondents felt habitats for abundant game species have been enhanced at the expense of habitats for less common and more sensitive species. They asserted that such practices indicate the need for a shift of emphasis from demand species to focal species and species-at-risk. In contrast, some felt that many species of big game are not receiving the management attention they warrant.

Response: Demand species are those plants and animal species of high social, cultural, or economic value. In the proposed rule, plan decisions must provide for ecological conditions needed to achieve sustainable use levels of demand species. This provision was deleted from the final rule to ensure that the treatment of demand species would not take place at the expense of habitats for focal species and species-at-risk.

Comment: Use of focal species. Some respondents believed the Forest Service should reconsider the use of focal species as indicators of ecosystem integrity. One citizen asserted, ''There is not enough money in the federal treasury to fund the numerous surveys and analyses that will ultimately be required.'' Others agreed with this sentiment, and added that the emphasis of the final rule should be shifted from focal species to habitat capability. The Forest Service should be monitoring for habitat, they declared, because it is not only easier than monitoring for populations, but it also allows the appropriate entity, the individual stated, to manage and monitor wildlife species.

Response: The Department acknowledges an increase in analysis and monitoring in the proposed rule for ecological sustainability, including focal species. Continued declines in the cost of analysis and monitoring are expected in the future, however, with advances in information technology. Furthermore, the Department believes that no significant additional resources will be required for implementation of the final rule as the planning framework shifts resources from later to earlier in the planning process. For these reasons, the Department has retained the provisions for appropriate analysis and monitoring in the final rule.

Comment: Assessing viable populations of species. Population sampling and monitoring of species, especially threatened and endangered species, needs to be a mandate in the final rule, some respondents asserted. These respondents felt that without actual population surveys, species viability will not be sustained. Another individual wondered if scientists have reached any consensus on broad-scale methods and strategies for providing species viability. This person asserted that such a model does not exist and hence the attainment of species viability will be marred by confusion and conflict.

Response: In the proposed rule, population sampling is appropriate when the risk of local or broader extirpation is high or there is high uncertainty about the habitats and conditions needed for species viability. In the final rule, the plan monitoring strategy may require population monitoring for some focal species and some species-at-risk as appropriate.

The responsible official's decision to monitor populations and the responsible official's choice of methodologies for monitoring selected focal species and selected species-at-risk in the final rule may be based upon factors that include, but are not limited to, the degree of risk to the species, the degree to which a species' life history characteristics lend themselves to monitoring, the reasons that a species is included in the list of focal species or species-at-risk, and the strength of association between ecological conditions and population dynamics. The Department believes this language provides assurance that species viability will be sustained.

Many scientists have reached a consensus on broad scale methods and strategies for providing species viability. These scientists believe that taking an ecosystem diversity approach increases the potential to meet the needs of the preponderance of species. This is particularly important because it is financially and technically impractical to individually assess each species.

Ecological sustainability has two primary indicators in the final rule: ecosystem diversity and species diversity. Ecosystem diversity provides a ''coarse filter'' approach for sustaining ecosystems. Ecological diversity is defined in a broad context by language throughout section 219.20 of the final rule. Characteristics of ecosystem diversity include, but are not limited to, major vegetation types, water resources, soil resources, air resources, and focal species. Evaluation of ecological diversity includes information about focal species, biological and physical properties, principal ecological processes, effects of human activities, estimations of the range of variability of characteristics, effects of air quality, water uses, and reference landscapes. Species diversity provides a ''fine filter'' approach for sustaining ecosystems in the final rule by addressing those species that may not remain viable under the coarse filter approach. These species typically include those that are currently thought to have a high extinction risk within an area of interest. The combination of coarse and fine filters in the final rule has the advantage of efficiency; the responsible official assumes adequate representation of ecological conditions by maintaining or restoring a diversity of ecosystems and checks this assumption through assessments of viability of a subset of individual species.

Comment: Use of plant and invertebrate species in evaluating species viability. Many respondents exhorted the Forest Service to reconsider the use of plant and invertebrate species in evaluating species viability. Most of these

respondents felt that insufficient scientific data exists to implement this increase in the scope of analysis. Other respondents applauded the inclusion of plant and invertebrate species viability as an indicator of ecological integrity. Of these respondents, at least one individual suggested the Forest Service expand the species viability criteria to include organisms from all the biological kingdoms.

Response: The proposed rule implemented the NFMA requirement to provide for the diversity of plant and animal communities by expressly defining species to include any taxon of the plant or animal kingdom. The current rule only requires that viable populations of vertebrate fish and wildlife be maintained. In the final rule, a species is defined as any member of the animal or plant kingdom that is described as a species in a peer-reviewed scientific publication and is identified as a species by the responsible official pursuant to a plan decision.

The Department acknowledges an increase in requirements for species viability. But as noted above, continued declines in the cost of information technology, such as personal computers and the application of remote sensing technologies, are anticipated. In addition, it is expected that the application of broad-scale assessments and subsequent smaller-scale analyses and decisionmaking will build on one another and improve the overall efficiency and effectiveness of planning activities.

The Department has not expanded the species viability criteria to include organisms from all the biological kingdoms. NFMA's requirement is specific to plant and animal communities.

Comment: Sustaining viable populations of non-native species. Some respondents wondered why the Forest Service would wish to maintain species that, by definition, disrupt the ecological integrity of an ecosystem. One respondent wanted the Forest Service to recognize that planning, in and of itself, cannot ensure species viability. This person supported this assertion by noting that the American Chestnut, once the dominant, climax tree species in eastern forests, has been wiped out by chestnut blight. Forest planning has no effect on the loss of such major ecosystem components, this respondent asserted. Another citizen applauded the agency's acknowledgment of incomplete information, uncertainty, and the inherent variability of ecological systems. Such an acknowledgment should be heeded, this person asserted, and precaution and prudence should be used when implementing any new management practices.

Response: The proposed rule defined desired non-native species as those species of plants or animals that are not indigenous to an area but which represent a significant, and usually remnant segment of a gene pool. The final rule retains its reference to desired non-native species, which are defined as those species of plants or animals which are not indigenous to an area, but valued for their contribution to species diversity or their high social, cultural, or economic value.

The Department agrees that planning, in and of itself, cannot ensure species viability. The Forest Service can only affect certain ecological conditions on land it manages, such as the abundance and distribution of habitat, roads, other structural developments, many human uses, and some invasive or exotic species. Other factors beyond the control of the Forest Service may influence the viability of species.

As noted above, the final rule provides that where it is not practicable to make measurable progress toward conditions within the expected range of variability, plan decisions may provide for ecosystem composition and structure outside the expected range of variability. Other independently peer-reviewed methods must be used to provide for ecosystem diversity.

An alternative method of providing for ecosystem diversity, which was described in the proposed rule, is the historic range of variability referenced to pre-European settlement conditions. Yet another approach would be a range of variability referenced using a time period more recent than pre-European settlement conditions. This would provide for ecological sustainability where circumstances, such as the Chestnut blight, which have irretrievably altered the landscape. In the future there may also be other methods that have not yet been fully tested or envisioned.

The proposed rule acknowledged the uncertainty and inherent variability of ecological systems (sections 219.20(a)(10) and 219.20(b)(1)). The Department agrees with respondents that welcomed the inclusion of this language. The final rule retains this language and relocates it to section 219.22, The overall role of science in planning.

Comment: Discretionary language. Many respondents felt that specific, imperative language should be used in section 219.20 (b) of the proposed rule. Discretionary language is too vague to be enforceable, they asserted. One person asserted that phrases such as, ''Maintain the more likely conditions within the range,'' and ''provide for * * * redundancy of habitat as necessary to buffer disturbances characteristic of dynamic systems,'' needs less jargon and more clarification. Another respondent felt that the final rule should consider the variability of species distributions and density over time.

Response: The Department acknowledges a lack of clarity in the proposed rule and has revised paragraph (b) in section 219.20 to improve its clarity and readability.

The species viability criteria do not specifically address the variability of species distributions and density over time. These are factors to be addressed during plan revisions as required by NFMA, to provide for diversity of plant and animal communities based on the suitability and capability of the specific land area, in order to meet overall multiple-use objectives (16 U.S.C. 1604(g)(3)(B)).

Comment: Species viability requirements. Numerous respondents felt that the Forest Service should use clear, specific, imperative language to guide the maintenance of species viability. Some of these respondents also believed the final rule should specify a discrete time period over which species viability will be measured. Although dissent exists among the public and even within the Committee of Scientists, one respondent believed this should not preclude the Forest Service from including requirements for sustaining viable populations. The majority of respondents that supported requirements for sustaining viable populations believed the final rule should contain specific guidelines in this respect, rather than the vague ''high likelihood'' standard. Conversely, some respondents believe the Forest Service should reconsider the requirement in the proposed rule to sustain viable populations. They felt that such a mandate makes wildlife the dominant, if not exclusive, goal of forest planning. Others questioned whether funding sources will be available to support such a mandate.

Response: As noted above, the Department does not believe there is a lack of imperative language in section 219.20(b). It does acknowledge less than clear descriptions in this section of the proposed rule. Paragraph (b) in section 219.20 is revised in the final rule to improve its clarity and readability.

As also noted above, the collection and analysis of information at a variety

of spatial and temporal scales is important in providing for maintenance or restoration of ecological sustainability. These scales include geographic areas such as bioregions and watersheds, scales of biological organization such as communities and species, and scales of time ranging from months to centuries. For this reason, the Department has not adopted a discrete time period over which species viability is to be measured.

The Department is adopting the ''high likelihood'' language to emphasize the importance it places on the viability of plant and animal species. The current rule states ''Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area.'' Furthermore, the rule states that ''a viable population shall be regarded as one which has the estimated number and distribution of reproductive individuals to insure its continued existence is well distributed in the planning area. In order to insure that viable populations will be maintained. * * *''. Together, the phrases ''shall be managed to maintain'' and ''ensure'' have been perceived by some people to be a 100 percent certainty that all species would remain viable at all times. This expectation in the face of known as well as unknown uncertainty, imperfect and incomplete information, as well as acknowledgment of systemic environmental variation is a standard that is arguably a technical impossibility—unattainable in the absolute. The Department has adopted the high likelihood standard, as an administrative rather than technical standard, to provide a reasonable level of assurance that species will remain viable and correct what is perceived by many to be a technical conundrum.

The Department revised the language in the final rule to clearly apply the high likelihood standard to ecological conditions rather than to the populations of species and their viability. This recognizes that the Forest Service can only affect certain ecological conditions on the land it manages. These conditions include the abundance and distribution of habitat as well as other factors such as roads, other structural developments, many human uses, and some invasive or exotic species. Other factors beyond the control of the Forest Service may influence the viability of some species. These factors include fragmented land ownership patterns, adjacent activities, climate, disease, and factors that may preclude a species from maintaining viability within National Forest System lands.

The Department has retained the requirement in the final rule to sustain viable populations. As noted above, the first priority for stewardship of the National Forest System, which is to maintain and restore ecological sustainability, is unchanged from the proposed rule. Ecological sustainability has two primary indicators in the final rule: ecosystem diversity and species diversity. Ecosystem diversity provides a ''coarse filter'' approach to the conservation of biological diversity. Species diversity requirements specified in the final rule defines what is commonly considered a ''fine filter'' approach. The combination of coarse and fine filters in the final rule has the advantage of efficiency: the responsible official assumes adequate representation of ecological conditions by maintaining or restoring a diversity of ecosystems and checks this assumption through assessments of viability of a subset of individual species.

The Department acknowledges an increase in requirements for species viability. But as noted above, continued declines in the cost of information technology are expected in the future. Furthermore, the Department believes that, in total, no significant additional resources will be required for implementation of the final rule.

Comment: Mandates to maintain habitat. Many respondents support maintenance of habitat. However, several people believed that as private lands become developed, the national forests and grasslands could become increasingly important refuges for sensitive species. They felt that the proposed regulations should include requirements to restore or maintain disproportionately greater amounts of habitat in national forests and grasslands for sensitive species. One individual requested clarification regarding the concept of redundancy of habitat. One organization suggested that the requirement to provide for redundancy of habitat would only lead to more litigation.

Response: In the proposed rule, consideration is given to National Forest System lands that have a unique opportunity to provide a disproportionately greater contribution to ecological conditions needed to reduce the likelihood of species becoming listed under the Endangered Species Act or to contribute to the recovery of listed species. In response to this comment, the final rule strengthens this provision by requiring plan decisions to reflect the unique opportunities that National Forest System lands provide to contribute to recovery of listed species.

Section 219.20(b)(8)(v) in the proposed rule required structural and functional redundancy of habitat as necessary to buffer disturbances characteristic of dynamic systems. This provision was not retained in the final rule and is best addressed in site-specific planning.

Other changes. This section has been substantially reorganized from the proposed rule and terms redefined. This was done to add clarity and respond to public comments and staff review. None of the changes in section 219.20 are intended to change the overall intent of the section as originally proposed.

''Ecosystem diversity and species diversity'' are specifically stated as the components of ecological sustainability in the final rule and provide a focus to reorganize information in this section. The proposed rule included, but did not explicitly identify ecosystem diversity and species diversity as the two components of ecological sustainability.

COMPARISON OF THE COMPONENTS IN SECTION 219.20

Components	Proposed rule	Final rule
Spatial and temporal scales	(a) Includes NEPA under list of methods	(a) NEPA requirement already exists and is not included. Language added for responsible official to determine information and analyses needed for plan revisions, amendments, and site-specific decisions.
Characteristics of ecosystem and species diversity.		(a)(1) New language added for clarity.
Ecosystem diversity	(a)(1), (a)(7), (b)(6), (b)(7)	(a)(1)(i) Soil resource language added to level of detail consistent with water and air resources.

COMPARISON OF THE COMPONENTS IN SECTION 219.20—Continued

Components	Proposed rule	Final rule
Species diversity	(a)(1), (a)(7)	(a)(1)(ii).
Evaluation of ecological sustainability	(a), (a)(5), (a)(8)	(a)(2) Language added that describes evaluations of ecological sustainability.
Focus species	(a)(7)(i)	(a)(2)(i)(A).
Biological and physical properties of ecosystems.	(a)(1)	(a)(2)(i)(B).
Ecological processes	(a)(2)	(a)(2)(i)(C) Adds specific information to be included in the description of other ecological processes and feasibility of maintaining ecological processes (e.g. dispersal, migration, nutrient cycle, food web dynamics, waterfowls, etc.)
Effects of human activities	(a)(3)	(a)(2)(i)(D).
Effects of air quality	(b)(7)	(a)(2)(i)(F).
Estimates of water use	(b)(6)	(a)(2)(i)(G).
Plan decision requirements for soil, water and air.	(b)(6), (b)(7)	(b)(1) Language not retained, requirements included within overall statement.
Identification of reference landscapes	(a)(6)	(a)(2)(i)(H).
Definitions: Focal species, Species-at-risk	(a)(7)(i), (a)(7)(ii)	Section 219.36, Definitions.
Species viability	(a)(8)(i)	(a)(2)(ii) Situations where risks to viability are high not included, enough language is included to analyze these situations.
Measures of ecological integrity	(a)(8)(ii)	Provides for evaluation of a comprehensive list of physical and biological indicators.
Individual and group species assessments	(a)(8)(i)	(a)(2)(ii) Language added requiring individual species assessments of federally listed species, otherwise allowing for group assessments. Group assessments necessary for financial and technical feasibility.
Variability of ecological systems	(a)(10), (b)(1)	Section 219.22.
Consistency of planning level decisions and existing rights and legal requirements.	(b)	Section 219.7 adequately describes these requirements.
Plan decision for maintenance or restoration of ecosystems.	(b)(2), (b)(3)	(b)(1).
Conditions within the range of variability	(b)(3)(i), (b)(3)(iv) for exception	(b)(1)(i) New language provides an exception, (b)(1)(iv), when staying within the range is unacceptable.
Conditions outside the range of variability	(b)(3)(ii), (b)(3)(iv) for exception	(b)(1)(ii) New language provides an exception, (b)(1)(v), when staying outside the range is acceptable.
Range of variability cannot be defined	(b)(3)(iv)	(b)(1)(iii) New language ensures other peer-reviewed methods are used.
Natural disturbance processes	(b)(3)(iii)	(a)(2)(i)(E).
Future stewardship choices	(b)(4)	(b)(1) Language not retained, intent addressed.
Reference landscapes	(b)(5)	(b)(1) Language not retained, intent addressed.
Plan decisions affecting species diversity	(b)(8), (b)(8)(ii), (b)(8)(iii), (b)(8)(i) replaced by new language referencing methods.	(b)(2).
Exceptions for plan decisions affecting species diversity.	(b)(8)(iv)	(b)(2)(ii).
	(b)(8)(ii)	(b)(2)(iii) New language to prevent species extirpation and support viability. (b)(2)(iv) Added to support viability where infeasible to restore ecological conditions.
Redundancy of habitat to buffer disturbances	(b)(8)(v)	Language not retained, requirements of the section provide a comprehensive ecological approach.
Federally listed species	(b)(10)	(b)(3)(i) Language that actions not contribute to species listing is covered under ESA and restated only for conservation agreements.
Biological opinions and recovery plans	(b)(9)	(b)(3)(ii) Specific language for recovery plans is replaced by requirement for plan decisions and ESA.

Section 219.21—Social and economic sustainability. This section of the proposed rule described a process for developing a comprehensive understanding of sustainable social and economic environments.

Comment: Definition of economic and social sustainability. Many respondents express confusion over the myriad of definitions of social and economic sustainability contained in the proposed planning regulations. Clear, concise, and consistent definitions are needed, according to numerous citizens. Several

people believe the use of discretionary language in this section is rampant, and therefore makes all the subsequent guidelines moot.

Response: The Department acknowledges a lack of clear, concise, and consistent definitions in the proposed rule concerning social and economic sustainability. The final rule has been revised in response to this concern.

In the final rule, social and economic sustainability is defined as meeting the economic, social, aesthetic, and cultural needs and desires of current generations without reducing the capacity of the environment to provide for the needs and desires of future generations, considering both local communities and the nation as a whole. It also involves the capacity of citizens to communicate effectively with each other and to make sound choices about their environment.

The Forest Service contributes to social and economic sustainability by developing and considering relevant social and economic information and analyses, providing early and frequent opportunities for interested and affected people to participate in National Forest System planning and stewardship, and providing a range of uses, values, products, and services. These uses, values, products, and services include but are not limited to outdoor recreation; forage; timber; wildlife and fish; biological diversity; productive soils; clean air and water; and minerals. They also afford intangible benefits such as beauty, inspiration, and wonder.

The final rule requires the responsible official to develop or supplement information and analyses (section 219.21(a)), including specific social and economic analyses (section 219.21(a)(1)) and analyses of community or regional risk and vulnerability (section 219.21(a)(2)).

Comment: Goal of economic and social sustainability. Several people felt that social and economic concerns have received little consideration in past Forest Service decisions. These people do not think the proposed regulations will prevent such transgressions. To help emphasize these concerns, one person requested that social and economic sustainability be split into two separate sections. Another individual asserted that the Forest Service should establish the achievement of economic and social sustainability as the first priority among the goals of the proposed rule. Of those that believe the social and economic section needs to be emphasized and expanded, many requested that the Forest Service promulgate specific, mandatory guidelines for achieving social and economic sustainability. Some believed the proposed rule should not emphasize economic and social sustainability, because they fear such an emphasis will result in the reallocation of time and money away from natural resource management. Improving local stewardship capacities and collaboration were also offered as ways to attain social and economic sustainability.

Response: In the final rule, the Department has not split social and economic sustainability into two separate sections. Nor has it established the achievement of economic and social sustainability as the first priority among the goals of the proposed rule. Finally, the Department has not included in the final rule specific, mandatory guidelines for achieving social and economic sustainability.

Requirements for achieving sustainability are found in sections 219.19, 219.20, and 219.21 of the final rule. As noted above, social and economic sustainability is achieved by providing a range of uses, products, services, and values, consistent with ecological sustainability (section 219.20(b)). The first priority for stewardship of the National Forest System, which is to maintain and restore ecological sustainability, is unchanged from the proposed rule. As noted by the Committee of Scientists, ''* * * ecological sustainability lays a necessary foundation for National Forests and Grasslands to contribute to the economic and social components of sustainability, making contributions to strong productive economies and creating opportunities for enduring human communities.''

The Department agrees that improving local stewardship capacities and collaboration are ways to attain social and economic sustainability. The proposed rule provided that the responsible official and those involved in planning should invite and encourage others to engage in the collaborative development of landscape goals. This language has been retained in the final rule (section 219.12(b)(1)). As noted in the Committee of Scientists' report, collaborative planning is a shared process within which agencies cooperate with one another; work with tribes, other public, and private organizations; and engage communities and citizens in envisioning and working toward a sustainable future on the national forests and grasslands.

Comment: Role of timber harvest in economic and social sustainability. One respondent believed that the Forest Service must realize that timber harvest is necessary to achieve economic and social sustainability. In contrast, another individual asserted that the Forest Service has no responsibility or reason to sustain certain cultural and economic practices such as commodity extraction. No federal agency should maintain a particular lifestyle over another, according to this respondent.

Response: The proposed rule did not consider timber harvest or more generally, commodity extraction, necessary to achieving economic and social sustainability. Nor did the Department include either of these issues in the final rule. The rule does establish a process for identifying, discussing, and, if appropriate, acting on issues that may emerge from a variety of sources (section 219.4). The Department believes that these issues are most appropriately addressed using this process.

Comment: Analysis of economic and social sustainability. Many respondents offered various ideas to help achieve social and economic sustainability in national forest communities. One person suggested the Forest Service adopt better modeling tools to improve analysis. Others cited the need to expand the analysis criteria to include adjacent communities and elected officials in management decisions. One person believed the Forest Service should reconsider the requirement to analyze social and economic sustainability on a large scale. Such analysis, this person asserted, masks the impacts on small and sparsely populated communities.

Response: The Department agrees that better modeling tools should be adopted to improve analysis. The final rule requires that the best available science be considered in planning (section 219.22(a)).

The Department has not expanded the analysis criteria to include adjacent communities and elected officials in the analysis of management decisions. As noted above, section 219.14 of the final rule identifies some of the key steps where state and local governments will be engaged in planning. State and local governments will be involved in the identification of issues as described in section 219.4(a). In addition, the rule recognizes the need for the Forest Service and state and local governments to coordinate plans and programs. Section 219.3(c) provides opportunities for state and local governments to participate in the collaborative planning process.

The proposed rule encouraged appropriate analysis within the relevant scales of influence for national forest and grassland planning and decisionmaking. This language has been

retained in the final rule. Large-scale studies may not be appropriate to determine the impacts of an action within a particular village or small town. Conversely, looking only at economic or social relationships within a village or small town may mask identification of regional trends and emerging events. As with many topics, the early identification of issues and their appropriate scope and scale are critical to successful planning and natural resource management.

Comment: Measurement of social sustainability. The exact means by which social sustainability will be measured needs to be clarified for many respondents. Some felt that the proposed regulations should expand the criteria of future social analyses to include the input of adjacent communities and their elected officials. Numerous people cited the use of discretionary language, such as ''may'' and ''should,'' as a serious flaw in the proposed regulations. These individuals would like to see the inclusion of imperative language, such as ''shall'' and ''must,'' to ensure that social analysis is, in fact, undertaken.

Response: The proposed rule did not describe the exact means by which social sustainability will be measured. This information was not included in the final rule. Instead, this information will be included in the Forest Service Manual.

As noted above, the Department has not expanded the criteria of analyses to include the input of adjacent communities and their elected officials. Section 219.14 of the final rule identifies some of the key steps where state and local governments will be engaged in planning. State and local governments will be involved in the identification of issues as described in section 219.4(a). In addition, the rule recognizes the need for the Forest Service and state and local governments to coordinate plans and programs. Section 219.3(d) provides opportunities for state and local governments to participate in the collaborative planning process.

As noted above, the Department agrees that the use of discretionary language, such as ''may'' and ''should,'' was a serious flaw in the proposed rule. The final rule requires the responsible official to develop or supplement information and analyses (section 219.21(a)), including specific social analyses (section 219.21(a)(1)(i)) and analyses of community or regional risk and vulnerability (section 219.21(a)(2)).

Comment: Social data and effects. Specific clarification regarding social data collection is needed according to many respondents. Local values, social standards, and changes in social values were mentioned as criteria that need to be further clarified. The social effects of the loss of timber industry jobs, specifically on rural communities, were also a concern. Several respondents asserted that their quality of life is at least partially, if not wholly, dependent on the health of the national forests.

Response: The Department agrees that the proposed rule was not specific concerning the collection of social information. As described above, the final rule requires the responsible official to develop or supplement information and analyses (section 219.21(a)), including specific social analyses (section 219.21(a)(1)(i)). Additional specificity will be provided in the Forest Service Manual.

Included in section 219.21(a)(1)(i) of the final rule is the requirement to develop or supplement information on social and cultural opportunities provided by National Forest System lands. The Department believes this language encompasses the social effects of the loss of timber industry jobs, including those effects on rural communities.

The Department agrees that quality of life is at least partially dependent on the health of the national forests. As noted above, the first priority for stewardship of the National Forest System, which is to maintain and restore ecological sustainability, is unchanged from the proposed rule.

Comment: Economic analysis of Forest Service management. Several people felt that previous economic analyses of national forests have been myopic in scope, and hence the proposed rule should expand the criteria of future economic analysis to include adjacent communities and elected officials in management decisions. Some cited the need for a comprehensive economic analysis of the entire Forest Service and its management activities.

Response: As noted above, the Department has not expanded the criteria of analyses to include the input of adjacent communities and local elected officials. Section 219.14 of the final rule identifies some of the key steps where state and local governments will be engaged in planning. State and local governments will be involved in the identification of issues as described in section 219.4(a). In addition, the rule recognizes the need for the Forest Service and state and local governments to coordinate plans and programs. Section 219.3(c) provides opportunities for state and local governments to participate in the collaborative planning process.

An economic analysis of the entire Forest Service and its management activities is beyond the scope of this rule.

Comment: Valuation of non-market benefits. Several respondents felt that the Forest Service has been ignoring the indirect and often time invisible benefits of forest systems. They believed that non-commodity resource benefits, such as carbon sequestration, oxygen production, and water filtration, should be factored into any economic analysis of forest management activities. One citizen urged the Forest Service to assign a monetary value to these traditionally priceless benefits. This individual felt that such an exercise would ensure that the loss of these benefits would be a factor in economic cost-benefit analysis.

Response: The proposed rule provided for, but did not require, the consideration of the financial and opportunity costs derived from market and non-market use. Section 219.21(a)(1)(ii) of the final rule requires the development of information on the range and estimated long-term value of market and non-market goods, uses, services, and amenities that can be provided by National Forest System lands consistent with the requirements of ecological sustainability. This includes the cost of providing them, and the effect of providing them on regional and community well-being, employment, and wages. The Department believes this language in the final rule requires the inclusion of commodity and non-commodity resource benefits in economic analyses, with values assigned to these benefits.

Comment: Economic impacts on ecosystems. Some respondents felt that the long-term ecological consequences have not been considered when conducting cost-benefit analysis of past forest management activities. One individual cited the long-term loss of water quality incurred from the short-term economic benefit of logging as an example. Another citizen stated that timber harvest often has adverse economic impacts, citing the loss of windbreak and temperature regulation that a nearby forest once provided local families. Some respondents suggested that the cost-benefit analysis of past logging expand in scope to include any and all costs associated with specific projects.

Response: The proposed rule did not provide for cost-benefit analysis of past forest management activities. The Department has not included such a provision in the final rule. While

acknowledging that timber harvest in the past may have had adverse economic impacts, the Department does not believe that quantifying past economic impacts would significantly improve the planning process.

As noted above, the final rule requires the development of descriptions and analyses, including the estimated long-term value of market and non-market goods, uses, services, and amenities that can be provided by National Forest System lands consistent with the requirements of ecological sustainability.

Comment: Economic impacts on local economies. Some respondents felt that the final rule will further restrict timber harvest, and this restriction will adversely affect the economies of local companies and communities. Other individuals cited the need for the Forest Service to specifically identify the economic impacts the proposed rule may have on local economies. Many felt that the small, rural communities associated with national forests have experienced, and will continue to experience, the majority of impacts any change in forest management policy engenders. Thus, they asserted, local communities, especially those where the majority of adjacent land is federally owned, warrant special consideration.

Response: The proposed rule provided for, but did not require, the consideration of economic estimates of the National Forest System contribution to present and future society benefits. As noted above, section 219.21(a)(1)(ii) of the final rule requires the development of information on the range and estimated long-term value of market and non-market goods, uses, services, and amenities that can be provided by National Forest System lands consistent with the requirements of ecological sustainability. This includes the cost of providing them, and the effect of providing them on regional and community well-being, employment, and wages. The Department believes this language helps identify the economic impacts on local economies.

Comment: Direct and indirect costs. Another person felt the language in the current rule better ensures that direct and indirect costs are included in such an economic analysis. This person suggested the Forest Service retain the current language rather than adopt the less stringent proposed language. Such language will lead to more divisiveness, according to this individual. In addition to including traditional expenses, these people believed the Forest Service should include the costs of general overhead and possible litigation in their economic analysis.

Response: In the proposed rule, lands not suited for timber production included lands where the costs of timber production were not justified by the ecological, social, or economic benefits (section 219.28(b)(5)). This provision has not been retained in the final rule. In the final rule, the responsible official may establish timber production and its possible harvest as a multiple-use value and plan objective within the plan area where timber may be harvested if the costs of timber production are justified by the ecological, social, or economic benefits (section 219.28(b)). The Department believes the costs and benefits referenced in this Section of the final rule include all direct and indirect costs and benefits.

Comment: Economic analysis and demographics. Several respondents believed that the Forest Service should conduct economic analyses suited to local demographics. The densely populated, sparsely forested East Coast is demographically distinct from the sparsely populated, densely forested western regions. Some asserted that such demographics should be incorporated into the economic analysis of Forest Service activities. The dearth of forests and plethora of humans in the eastern region of the United States dictates that the value of tourism should outweigh the value of timber in eastern economic analyses, according to these respondents.

Response: The proposed rule provided for, but did not require, the consideration of the demographics, including current demographics related to direct, indirect, and induced effects on income, population, and industry employment, and the ability of communities to adapt to change. The final rule requires the development of descriptions and analyses, but its treatment of demographics is limited to social trends.

Other changes. The Department acknowledges the frequent use of discretionary language in this section of the proposed rule. In contrast, the final rule requires the responsible official to develop or supplement information and analyses, including specific social and economic analyses and analyses of community or regional risk and vulnerability, paragraph (a).

The proposed rule did not include requirements for plan decisions that may affect economic and social sustainability. The final rule requires that plan decisions contribute to social and economic sustainability by providing a range of uses, products, services, and values, consistent with ecological sustainability, paragraph (b). This paragraph also contains new language concerning the scope and scale of decisions, issues addressed, and analyses conducted in previous provision of this section. The language was added to clarify that plan decisions affecting economic and social sustainability would be made consistent with the principles of ecological sustainability and applicable laws, including the MUSYA.

The Department acknowledges respondent's concerns regarding definitions for social and economic sustainability in the proposed rule that are clear, concise, and consistent. Section 219.21 is revised to reduce redundancy and improve clarity and readability, as described below:

COMPARISON OF THE COMPONENTS IN SECTION 219.21

Components	Proposed rule	Final rule
Planning involves interested and affected people	(a)	Opening paragraph references sections 219.12 through 219.18.
Social and economic information	(b), (c), (d)	(a) Language added that requires social and economic information and analyses for planning.
Economic effect	(b)(4), (b)(5), (b)(7)	(a).
Social and economic analyses	(b)(3), (b)(4), (c)(1), (c)(2), (d)(1), (d)(2)	(a) Adds monitoring results to the list of methods.

COMPARISON OF THE COMPONENTS IN SECTION 219.21—Continued

Components	Proposed rule	Final rule
Demographic trends	(b)(1), (e)	(a)(1)(i) Language added to include social and cultural opportunities, community assistance needs, and other appropriate information to provide a comprehensive list of social indicators.
Employment, income, and other economic trends.	(b)(3–6)	(a)(1)(ii) Language added includes long-term costs and benefits provided by National Forest System lands and their effects on community well-being to provide a comprehensive list of economic indicators.
Benefits of restoration strategies	(b)(2)	(a)(1)(iii).
Other information		(a)(1)(iv) Added to provide for issues being considered by the responsible official, section 219.4.
Risk and vulnerability analyses	(c)(3), (g)	(a)(2).
Evaluate social and economic sustainability		(b) Requires responsible official to use the information analyses developed in (a).

The Contribution of Science

Section 219.22—The role of assessments, analyses, and monitoring. This section of the proposed rule described the role of assessments, local analyses, and monitoring. In the final rule, this section has been renamed ''The role of science in assessments, analyses, and monitoring.'' It has been designated as section 219.23.

Comment: Integrating science into the planning process. While many people agree with using science as a management tool, respondents expressed a variety of opinions on how to best integrate science into the planning process. One person suggested replacing the phrase ''best available science'' with the phrase ''broadly accepted scientific principles, information, and analysis'' in order to maintain continuity in scientific assessment. Others contended that science must be statistically sound and supportable.

Response: The Committee of Scientists' report emphasized that ''Collaborative planning rests upon a foundation of scientific information developed by scientists and other knowledgeable people in an open, public process.'' The Committee identified at least five different tasks for scientists in collaborative planning: creating knowledge of relevance to collaborative planning, developing integrative science for bioregional assessments, helping managers understand the application of scientific and technical knowledge, helping to design effective monitoring procedures and adaptive management experiments, and evaluating the use of scientific information in planning and implementation.

Planning is based on scientific and other forms of knowledge. Where scientific information is used, the quality of such information should be ensured by using appropriate levels of independent peer review, quality assurance protocols for monitoring and other data, as well as free and open access by the public (including the scientific community) to data, assumptions, and conclusions.

The final rule acknowledges these roles for science and the responsibilities of the Forest Service Research and Development Program. It requires the responsible official to ensure that the best available science is considered in planning (section 219.22). It also sets mechanisms in place through involvement of Forest Service Research and Development, Science Advisory Boards (section 219.25), science consistency evaluations (section 219.24), and scientific peer reviews (section 219.22) to ensure that the best science is available to decision makers, is properly analyzed and interpreted, and can be applied with scientific credibility.

Comment: Human values and multiple perspectives. Even though many believe that the use of scientists in national forest planning is important, some requested that human values and multiple perspectives be integrated with science to evaluate sustainability.

Response: The role of science in the final rule (section 219.22) is to ensure that the best available science, including social science, is available and soundly considered in planning. Collaborative planning involving other federal agencies, state and local governments, American Indian Tribes and Alaska Natives, private landowners, and other interested individuals and organizations (sections 219.12 to 219.18) is encouraged to ensure that a broad range of human values and perspectives is brought to bear, along with the best science available, in land management planning. Through these processes, a locally appropriate balance of ecological conditions and social issues, goals, and proposed actions will be identified to ensure that scientifically sound management decisions are made to sustain ecological conditions for the future while meeting current desires and requirements of humans. Furthermore, the final rule underscores that science provides information, not decisions, and it is the responsible official who has final decision authority.

Comment: Balance between economic, social, and biological sciences. Many respondents asserted that economic and social sciences must be weighed equally with biological sciences in the decisionmaking process.

Response: Section 219.22(a) of the final rule includes new language requiring consideration of the best available science in the development of recommendations or conclusions. This includes all scientific fields appropriate to natural resource issues, which will be considered by the responsible official along with other forms of input in decisionmaking.

Other changes: The introductory paragraph of the proposed rule has not been retained in final rule. This information is already contained in section 219.5.

Section 219.23—The participation of scientists in planning. This section of the proposed rule described expectations and roles for scientists in National Forest System planning and decisionmaking. In the final rule, this section has been renamed ''The overall role of science in planning.'' It has been designated as section 219.22.

Comment: Use of sound science. Various individuals suggested that the

regulations clarify the definition of ''scientist.'' The real issue, according to some of these respondents, is the use of sound science information and scientific methods—not who brings the information or methods to the process.

Response: The Department agrees, and section 219.22 of the final rule shifts the emphasis from scientists, as the deliverers of scientific information, to the role of science in the planning process. This shifts the focus from individuals who may participate in the process, to an embracing of science as an integral part of National Forest System planning—thus including scientific knowledge, scientific methods, and expert scientific review and opinion, including analyses based on the latest scientific information.

Comment: Influence of science advisory panels. Enthusiasm for science in land management was tempered by concerns regarding the level of authority and influence of science advisory panels. Some felt that the scientific advisory board should support Forest Service staff and should not be involved in decisionmaking.

Response: The final rule requires the responsible official to ensure that the best available science is considered in planning. It clarifies the intent that science consistency evaluations (section 219.24) and science advisory boards (section 219.25) are to inform this process, not to advocate a particular decision, and clearly states that all decision authority rests with the responsible official.

Comment: Cost and effectiveness of scientific input. Some respondents questioned the cost and effectiveness of increasing the required levels of scientific input into the forest planning process. Others expressed concern that the Forest Service does not have the budget or resources to effectively evaluate the credentials of non-governmental science professionals.

Response: The final rule requires that the best scientific information be considered in planning (section 219.22(a)), but recognized that all plan decisions do not require detailed and costly broad-scale assessments, science consistency evaluations, or similar costly approaches, to achieve this goal (section 219.5). Concerns regarding scientific efficacy are addressed by increasing peer review of science input (section 219.22), involving the Deputy Chief for Research and Development, Research Station Directors, and Science Advisory Boards (sections 219.24 and 219.25).

Comment: Use of science advisory boards. Forest Service officials are granted too much discretion in determining the use of peer reviews and science advisory boards, many respondents contended. Additionally, many respondents worry about the potential for bias in the selection of scientists. One person recommends using professional literature searches to ensure an efficient and cost effective means for gathering and documenting information. Others recommended publishing the names and qualifications of those selected to serve on science advisory boards.

Response: The final rule requires full consideration of the best available science in plan development, including peer review and science consistency evaluations. Peer reviews and public involvement provide powerful mechanisms to detect scientific or other bias in decisionmaking. Furthermore, the final rule clarifies that the responsible official, not scientists or others, makes the decision. Membership on advisory boards would be public information, and the Department assumes that literature searches would be a part of applying the best available science where appropriate.

Other changes. Section 219.23 in the proposed rule, paragraphs (b) and (c) are not retained in the final rule. These are functions of scientists listed in the proposed rule, which are only illustrative and not needed in the final rule. In the proposed rule, general assistance in applying relevant scientific information is addressed in paragraph (a), to the extent necessary in the rule, by science consistency evaluations in section 219.25. The material related to issues in paragraph (d) of the proposed rule, is also not retained. It is referenced in section 219.4 which suggests that the responsible official consider the scientific basis and merit of available data and analyses in determining whether an issue is appropriate for consideration. Section 219.23 in the final rule addresses the role of science in information development and interpretation. Since the final rule does not focus on scientists, the last sentence in paragraph (d) of the proposed rule discussing their employer is not included.

Section 219.24—Science consistency evaluations. This section of the proposed rule described responsibilities for scientific review of planning processes to ensure that proposed actions and supporting procedures are consistent with current scientific understanding.

Comment: Some reviewers felt that the planning regulations should clarify what science consistency guidelines may be used if the responsible official chooses not to consult with the science advisory board.

Response: The final rule requires the responsible official to consider the best available science in plan development and subsequent decisions; it is at her/his discretion as to how this can best be accomplished. The final rule makes it clear that the use of advisory boards is one means identified in the final rule to assist, others include: Direct informal and formal involvement of scientists and technical experts, peer reviews of draft analyses and plans, and science consistency evaluations. All of these, as well as others, are available to the responsible official. The method employed for a planning activity is to be selected by the responsible official, but at a minimum, the responsible official must periodically consult with an advisory board.

Other changes. There are two important changes in paragraph (a). The first clarifies the purpose of science consistency evaluations. The proposed rule initially stated that decisions must be consistent with available science. It then restates the test as whether information gathered, evaluations conducted, or analyses and conclusions reached in the planning process are consistent with the best available scientific information and analysis. A finding of inconsistency that results from this process does not necessarily mean that a decision is ''wrong.'' It does mean that the information and analysis supporting that decision should be revisited, which may in turn lead to a change in the decision. The final rule states the purpose of the science consistency evaluation is to determine whether information, evaluations, analyses, or interpretations used in proposals for plan decisions are consistent with the best available science.

The second change in paragraph (a) concerns the role of the science advisory boards in this process. In the proposed rule, the responsible official may use them to assist in the science consistency evaluation. In the final rule, the responsible official must use them to determine when a science consistency evaluation is appropriate. This change is consistent with the change in emphasis away from who is performing analysis. While the proposed rule did not require participation of the science advisory boards, it gave too much weight to this one approach. In addition, giving the science advisory boards a role in determining when to conduct science consistency analysis addressed the concern that there are no criteria for when such an analysis should occur.

Section 219.25—Science advisory boards. This section of the proposed rule described establishment of National and Regional Science Advisory Boards and work groups

Comment: Representation of interests. A large number of comments recommended that the proposed regulations establish protections against bias and unequal representation of interests. Many people advocated that the proposed planning regulations require representation from a broad range of scientific fields in peer evaluations and advisory boards. For example, some suggested that the Forest Service should better recognize university professionals and other federal agency scientists as resources in planning. Others argued that the use of non-Forest Service scientists be explicitly required in forest planning to minimize agency influence over scientific conclusions.

Response: Sections 219.25(a) and (b) of the final rule now stipulate that: ''Board membership (of National and Regional Science Advisory Boards) must represent a broad range of scientific disciplines including, but not limited to, the physical, biological, and social sciences.'' The Department believes that the purpose of the science advisory boards, as specified in section 219.25(a) of the final rule, is to advise on matters of science. It is not, however, a role of Advisory Board members to represent or advocate special interests. Sections 219.22(b) and 219.24(a) should help expose and mitigate any perceived bias.

Comment: Role of Forest Service scientists. Many respondents believe the role of Forest Service scientists needs to be clarified. Several people state that the proposed regulations will unduly burden Forest Service research station personnel and potentially compromise their integrity as field experts. Conversely, several people indicate that the regulations should encourage land managers to utilize research station professionals more extensively.

Response: The final rule specifies that ''the best available science'' must be considered and obtained from those individuals possessing appropriate scientific credentials. In some cases this may include Forest Service scientists. In others cases it may not.

This section of the final rule differs from the proposed rule in that the Deputy Chief for Research and Development must establish a National Science Advisory Board to advise on issues of national importance, rather than the Chief as required in the proposed rule. The final rule also states that Station Directors and the Deputy Chief for Research and Development must personally chair the science advisory board(s) they establish, or appoint the chair(s).

The proposed rule states that work groups could be established with the concurrence of ''Forest Service officials.'' The final rule specifies that concurrence must be by the Deputy Chief for Research and Development for the National Science Advisory Board, or the Research Station Director for a Regional Science Advisory Board.

Other changes. Paragraph (a) in the final rule requires the establishment of a national science advisory board. This board is required by paragraph (b) in the proposed rule. The role remains to provide advice on issues of national significance. The final rule clarifies that the Chief of the Forest Service will identify these issues. The composition of the science advisory boards generated many public comments, including some advocating a stronger role for Forest Service research scientists. In response, the final rule gives the Deputy Chief for Research and Development the responsibility for establishing and chairing the national science advisory board. In the proposed rule, the Chief of the Forest Service is responsible for establishing the national advisory board.

Paragraph (b) in both the proposed and final rules requires the appropriate Forest Service Research Station Director(s) to establish regional science advisory boards. As a result of public comments, in the final rule, this director or directors shall chair the advisory board or appoint a chair. The final rule clarifies the geographic boundaries of the boards need not align with National Forest System Regional boundaries.

Special Considerations

Proposed Section 219.26—Identifying and designating suitable uses. This section of the proposed rule identified the suitability of various uses on national forests and grasslands and provided criteria for making a determination of suitability within the planning framework. Designation of suitable land uses was one of the decisions that must be included in plans (see Section 219.7).

Comment: Multiple-use as the guiding principle. Multiple-use should continue to be the guiding principle for management of national forests, according to many individuals. Like a number of respondents who view this section as a significant departure both from relevant statutes and from the existing planning rule, these individuals saw the proposed planning regulations as de-emphasizing multiple-use to the extent that they ''violate the mandates prescribed in the NFMA and the MUSYA as well as other applicable rules and regulations.'' In particular, some respondents suggested that the planning rule encourage industrial commodity production and extraction. One person, though, asked the Forest Service to define the term multiple-use since the term may include connotations other than resource extraction.

Response: National forest and grasslands will continue to be available for a wide variety of multiple uses as long as those uses do not conflict with one another and they are appropriate for the location where they may occur. This section of the planning rule provides criteria for making this determination.

Comment: Criteria to identify and designate suitable uses. Some respondents believed that in comparison to the current NFMA planning regulations, the proposed criteria to identify and designate suitable uses is thoroughly inadequate. These individuals contended that the proposed rule should provide clear suitability standards—particularly regarding livestock grazing, mineral extraction, and timber removal. To this end, some respondents suggested that the Forest Service retain the existing suitability requirements since the current guidelines are more prescriptive than those included in the proposed regulations. In addition, several people asserted that the final rule's suitability requirements must not grant excessive discretion to Forest Service land managers. Specifically, they suggested replacing the word ''should'' with ''shall'' throughout the subsection. Such a change would require land managers to consider the possible uses listed in this section, they asserted. Several other people asked the Forest Service to clarify the statutory authority by which Executive Orders can restrict suitable uses of national forests. One respondent wondered how forest plans would designate and map management areas for specific uses.

Response: The Department has added criteria to the rule related to impairment of the productivity of the land and compatibility with plan decisions. With these changes, the Department believes that it has provided sufficient guidance for amendment and revision of plans. The current regulation was put in place to enable the agency to prepare comprehensive national forest and grassland plans. Detailed instructions were necessary and appropriate for completion of the first round of planning. Each national forest and grassland now has a plan in place, and the task at hand is to evaluate and improve upon each of these. Detailed

procedures regarding the integration of natural resource management practices are no longer appropriate. Rather, as described in the planning regulation, it is now appropriate to look to ways to improve existing plans and provide for needed adjustments in uses.

Comment: Access to national forests and grasslands. Several respondents feared that the proposed rule would limit access to national forest lands. Among those that felt access will be restricted, some asserted that if national forests really are the ''people's lands,'' then the people have the right to access them for recreation, such as hiking, biking, off-highway travel, and snowmobiling. ''I have a right as a taxpayer and a law abiding citizen to use these lands,'' wrote one respondent. Recreational access is especially crucial for visitors with disabilities, according to many. ''I cannot park a car in a trailhead parking lot and hike into areas that non-handicapped persons can,'' one citizen said. ''I should be able to access the same public lands as non-handicapped persons,'' this person stated.

Response: Congress has given the Secretary of Agriculture the responsibility to regulate use of the National Forests System. The MUSYA acknowledges that not all lands must be available for all uses. Any changes to access for specific uses under this rule will occur using the framework for planning, will involve collaboration with the affected and other publics, and will use the best available science to identify the uses that are suitable within the plan area.

Comment: Mining. Many respondents felt that the proposed rule fails to emphasize mining as a legitimate use of national forests. At the very least, according to one person, the proposed rule should clarify how nonrenewable resources, such as minerals, will be regulated. If mining is to be allowed, others asserted, its effects must be mitigated.

Response: Unlike current planning rule, the revised rule does not try to provide direction for specific uses. It focuses instead on sustainability of the economic, social, and ecological systems. Mining is one of many uses of national forests, and it may occur where it is a suitable use, consistent with plans. Other federal statutes applicable to mining must also be considered in determining where and how mining may occur.

The Department believes that this rule, and in particular, its sustainability requirements, will not by itself preclude mining activities. Analysis and collaboration conducted under the requirements of the rule, and following all applicable laws, will determine where mining is appropriate and what mitigation measures will be required. The rule's emphasis on ecosystem health, collaboration, and the role of science may very well result in the identification and implementation of effective and efficient mitigating measures applicable to mining operations, improving the overall sustainability of the use and development of what are commonly referred to as nonrenewable resources.

Comment: Grazing. Requiring monitoring and enforcement of grazing standards on national forest lands, some contended, will ameliorate the negative effects of grazing. To this end, wrote one person, the proposed rule should clarify how science will aid in determining the suitability of lands for grazing.

Response: This level of detail is not appropriate for this rule. The role of science is generally described in section 219.22, which requires the use of best available science in all aspects of planning, including suitability determinations.

Comment: Recreation. One respondent contended that limiting access to portions of public land might shift increasing visitor pressure into other, ever-dwindling, public use areas. Conversely, others specifically requested access restrictions for types of recreation that degrade public lands. Activities that are allowed on Forest Service lands—be they recreational or commercial-must not degrade forest resources, many argued. Still others questioned what role recreation should have in forest planning.

Response: Outdoor recreation is one of the uses of national forests recognized in the MUSYA. The NFMA requires that plans provide for these uses. In accordance with this rule, all potential uses, and decisions to limit access must be considered in the context of overall sustainability.

Comment: Biodiversity. One respondent suggested that the planning rule should require that public lands be evaluated for their role in maintaining and protecting biodiversity.

Response: Section 219.20 requires this evaluation.

Comment: Relationship with private land. Several respondents suggested that the proposed planning rule address the relationship between resource extraction on national forests and that on private lands. Another respondent argued for conservation easements across deeded lands.

Response: Section 219.17 requires the Forest Service to interact with private landowners, which may include the relationship between resource extraction on national forests and that on private lands and conservation easements across deeded lands.

Other changes. The final rule characterizes the process as identifying lands *not* suited for particular uses, whereas the proposed rule required identification of lands suited for certain uses. The approach in the final rule is more in line with the introductory statement that national forests and grasslands are suitable unless they are designated unsuitable.

Additional criteria are added to the final rule for identifying lands not suitable for particular uses. These are: (1) Incompatibility with policies of the National Forest System, (2) causing substantial and permanent impairment of the productivity of the land, and (3) incompatibility with one or more plan decisions. With these changes, the Department believes that it has provided sufficient guidance for amendment and revision of plans. The current regulation was put in place to enable the agency to prepare comprehensive national forest and grassland plans. Detailed instructions were necessary and appropriate for completion of the first round of planning. Each national forest and grassland now has a plan in place, and the task at hand is to evaluate and improve upon each of these. Detailed procedures regarding the integration of natural resource management practices are no longer appropriate. Rather, as described in the planning regulation, it is now appropriate to look to ways to improve existing plans and to provide for needed adjustments in uses.

Proposed Section 219.27—Special designations. The proposed rule identified types of special designations the Forest Service can recommend through the plan amendment or revision process. It required all roadless, undeveloped areas of sufficient size to be considered for wilderness designation. It required special areas designated by statute to be incorporated in the plan.

Comment: List of special designations. A state agency believed that the proposed planning regulations should clarify which special designations, in addition to those listed, will be allowed. In the minds of some respondents, the list in section 219.27 contains too many designations. In particular, many believed that public access would be unnecessarily limited by special designations such as wilderness and research natural areas. Others contended that Forest Service officials simply have too much discretion to authorize special designations. This, they believed, is an abrogation of

Congressional powers. Conversely, several people suggested that the Forest Service broaden the list of special designations to include heritage management areas, unique botanical areas, indigenous religious sites, and utility corridors. Some recommended protecting and strengthening existing special designations areas such as reference landscape areas and research natural areas.

Response: The lists of both Congressionally and administratively designated areas are examples, and not all-inclusive. The recommendation or designation of these or other kinds of special areas is within the scope of existing laws and regulations and is within the authority of planning as designated in NFMA. The framework for planning allows for the development of issues leading to the proposal of special designations, and also gives ample opportunity for the public and others to collaborate on the issue at all levels of planning.

In response to comments, and to more clearly delineate the authorities related to special designations, the final rule separates Congressionally designated areas, paragraph (a), from administratively designated areas, paragraph (c). Based on public comment, specific requirements for evaluating inventoried roadless areas and unroaded areas are included in section 219.9(b)(8) of the final rule to emphasize that the responsible official must evaluate these areas during the revision process. The Forest Service may adopt special designations or recommend designation to higher authorities through the planning process. In the final rule, the Forest Service is not limited to the classifications listed in the rule, and the Forest Service, Department, or Administration may designate areas as appropriate.

Comment: Wild and Scenic Rivers. Many respondents urged the Forest Service to protect watersheds, wetlands, and riparian areas. According to a few respondents, affected rivers must be evaluated for Wild and Scenic River designation as per the Wild and Scenic Rivers Act. Specifically, The Draft Unified Federal Policy for Ensuring a Watershed Approach to Federal Land and Resource Management was cited by a state agency as a model for watershed restoration. Correspondingly, a water users' association believed that the Forest Service's founding mandate dictates that the agency ensure certain and stable water flows from national forests. ''While the Cache La Prouder Water Users Association approves in concept the long-term, sustainable management of the forests, we are concerned that the proposed rule's emphasis on sustainability may in practice subvert and cripple one of the original purposes of the national forests—favorable conditions of water flows for use by the people.'' Conversely, one respondent asked the Forest Service to justify the purpose of maintaining riparian buffer zones.

Response: Authorities governing the development and the management of the National Forest System include the Organic Administration Act, the Clean Water Act, and the Wild and Scenic Rivers Act. The requirements of these must be followed. This rule does not reiterate those requirements, but it does create a framework for planning to meet them. Specific methods for the protection of watersheds, wetlands, and riparian areas and the use of riparian buffer zones are not addressed in this rule. These are developed through the planning process using the best available science.

Comment: Evaluating areas for wilderness. One respondent stated that the language of section 219.27(a) ''clearly singles out and emphasizes wilderness as a consideration for management and in the next paragraph says that roadless areas should receive a full range of management options.'' The wilderness biases should be eliminated from the text of the rule, this person believed. During any analysis of proposed wilderness, wrote one organization, an ecological, social, and economic cost-benefit analysis should be conducted. Some respondents suggested specific suitability criteria. ''There should be some sort of release criteria to prevent unsuitable areas from remaining in 'limbo' for decades as wilderness study areas do now,'' one respondent stated. Others called for using either environmental impact statements or site-specific analyses (in accordance with RARE I and II) as the appropriate tools to evaluate roadless areas for wilderness designation. Others questioned the efficacy of considering roadless areas for wilderness designation at this time—they suggest changing section 219.27(a) to exempt wilderness consideration ''during this round of plan revisions.''

Response: The Department believes that the best process for determining suitability for wilderness designation is the planning process embodied in this rule, and conducted at a scale that can address unique characteristics of each area. The Department does not see a need to change the wilderness suitability process significantly from the one that was used to develop current plans. Wilderness review is intrinsic to planning. Wilderness designation will be subject to the planning and public involvement requirements of this rule. A responsible official may establish management direction for areas not recommended for wilderness, consistent with requirements of this and other applicable rules. The Department does not believe this section of the rule establishes a bias or preference for wilderness designation.

Comment: Evaluating roadless areas. Many people supported the proposed rule's directive to evaluate roadless areas for wilderness designation. One person suggested that, at the very least, commercial activities should be prohibited in roadless areas.

Response: The Forest Service's proposed Roadless Area Conservation Rule would provide protections for inventoried roadless areas by prohibiting certain activities in inventoried roadless areas. In addition, as discussed above, the final planning rule clarifies that the responsible official will have to evaluate inventoried roadless and unroaded areas and consider additional protections during the time of plan revision.

Comment: ''Roadless'' and ''unroaded'' areas. A pervasive theme among respondents'' comments was the need for the Forest Service to clarify the definition and relationship of ''roadless area'' and ''unroaded area.'' Specifically, some questioned the appropriateness of using the term unroaded since, according to one group, ''Congress has never legally recognized the term.'' Another respondent, however, asked that the final planning rule clarify the definition of unroaded to address the size, configuration, composition, and inherent values of unroaded areas. The proposed rule was vague, according to a recreational organization, as to whether ''the Forest Service will undertake a comprehensive inventory of the unroaded areas.'' Many feel that the Forest Service should perform such an inventory since, according to one individual, ''the existing inventories on many forests were never performed accurately during the RARE II process.''

Response: To reduce this confusion, the final planning rule renames ''roadless'' areas ''inventoried roadless areas.'' Definitions of inventoried roadless area and unroaded areas in the final planning rule are consistent with the Forest Service's proposed roadless area conservation rule and road management policy. An unroaded area is any area, without the presence of a classified road, of a size and configuration sufficient to protect the inherent characteristics associated with its roadless condition. As noted above,

the final rule clarifies that during the revision process the responsible official must evaluate inventoried roadless areas and unroaded areas and identify areas that warrant protection and the level of protection to be afforded.

Comment: Protection of roadless areas. Many believed all remaining roadless areas on National Forest System lands—particularly roadless areas of 1,000 acres or more—should be protected. A primary reason cited for this view was the need to preserve ecologically significant areas upon which plant and animal species are dependent. Some believed the Tongass National Forest exhibited these qualities and argued that the Tongass not be exempted from roadless area protection. Others suggested biodiversity protection can be achieved by basing roadless area management on the recommendations found in the Committee of Scientists' report.

Response: The Forest Service's proposed Roadless Area Conservation Rule would provide protections for inventoried roadless areas by prohibiting certain activities in inventoried roadless areas. In addition, as discussed above, the final planning rule (section 219.9(b)(8)) clarifies that the responsible official must evaluate inventoried roadless and unroaded areas and consider additional protections during plan revision. This evaluation must include information and analyses developed to assess ecological sustainability, including assessments of ecosystem and species diversity at the appropriate spatial and temporal scale. The final planning rule does not include special provisions for the Tongass National Forest.

The Department believes it inappropriate to predetermine the size or configuration of unroaded areas to be analyzed and considered through plan revisions. In some areas, 1,000-acre unroaded areas may be an appropriate standard. In other areas, management criteria, such as the scarcity or abundance of unroaded and inventoried roadless areas, may require the consideration of smaller or larger sized areas. Responsible officials may determine that other size, configuration, or resource criteria may be appropriate to best evaluate and protect the important social and ecological characteristics of unroaded and inventoried roadless areas. Unroaded areas should be of a size, shape, and position within the landscape to reasonably achieve the long-term conservation of roadless characteristics such as soil, water, and air quality; sources of drinking water; diversity of plant and animal communities; habitat for threatened, endangered, proposed, candidate, and sensitive species and for those species dependent on large, undisturbed areas of land; primitive, semi-primitive non-motorized, and semi-primitive motorized classes of dispersed recreation; reference landscapes, landscape character and scenic integrity; traditional cultural properties and sacred sites; and other locally identified unique characteristics. Areas may include those that provide important corridors for wildlife movement, or areas that share a common boundary of considerable length with an inventoried roadless area, with a component of the National Wild and Scenic River System, or with unroaded areas 5,000 acres or more on lands administered by other federal agencies. In selecting areas, the responsible official should consider the distance from, and the scarcity of, other unroaded areas, particularly for those areas east of the 100th meridian.

Comment: Access to public lands. Many argued against the withdrawal of roadless areas because access for active management practices was needed to maintain forest health. Additionally, many stated that access to public lands for recreation was an essential component of multiple-use. Furthermore, the fact that motorized vehicle use had been authorized in certain areas in the past should ensure future access for this activity, according to some.

Response: This final rule does not withdraw roadless areas from active management or prohibit access to public lands. The proposed Roadless Area Conservation Rule proposes prohibiting certain activities in inventoried roadless areas, but it does not propose closing trails or roads, prohibiting off-road vehicle use, changing current forest access, or interfering with access granted by statute, treaty, or reserved or outstanding rights. Under the proposed roadless rule, decisions about recreational activities (other than those that depend on road construction and reconstruction) on National Forest System lands would continue to be made through the planning process with the full involvement of trail riders and other interested people.

Indeed, the final planning rule establishes a process for identifying, discussing, and, if appropriate, acting on issues that may emerge from a variety of sources and on a variety of special and temporal scales (section 219.3). This rule anticipates that issues will be resolved at the appropriate level—national, regional, or local—through the planning process. In some places, activities such as mineral exploration or recreational access to the national forests and grasslands may become issues. As such, these issues would be considered using the explicit collaboration, science, sustainability, and planning requirements articulated in the final planning rule.

Comment: Legal mandates and proposed roadless area conservation rule. Many respondents felt the proposed roadless rule must not violate existing statutes such as the Wilderness Act and the MUSYA. Several individuals expressed concern that the proposed roadless rule circumvents Congressional authority to designate wilderness areas. Among those who explicitly argued against the proposed roadless rule, the need to comply with forest management and multiple-use mandates were two prominent reasons offered in support of their position.

Response: Consistent with all applicable law, the Forest Service's proposed Roadless Area Conservation Rule would provide protections for inventoried roadless areas by prohibiting certain activities in inventoried roadless areas. In addition, as discussed above, the final planning rule (section 219.9) clarifies that the responsible official will have to evaluate inventoried roadless and unroaded areas and consider additional protections during the time of plan revision. These procedures are in accordance with existing statutory direction, including the Wilderness Act and the MUSYA.

Other changes. The final rule expanded the list of special designations to be more inclusive than that of the proposed rule. The final rule clarifies that an amendment or revision of a plan is a mechanism by which the Forest Service establishes management direction for special designations.

Section 219.28—Determination of land suitable for timber harvest. This section of the proposed rule established two classifications of land suitability for timber harvest. The first was the classification of lands not suited for timber production. The second was the classification of lands where timber harvest would be permitted.

Comment: Suitability classifications. The proposed rule listed two classifications of land relative to timber production: ''land not suited for timber production'' and ''land where timber harvest is permitted.'' A number of respondents claimed that these classes are not consistent with NFMA. Others suggested retaining the suitability determination requirements in the existing regulations. Some individuals suggested adding additional classifications such as ''lands unavailable for timber production'' or

other classifications that take into account forest health harvests or long-term harvest rotations.

Response: The final rule has been reorganized to better incorporate the intent of the NFMA, and also to better accommodate innovative management approaches to achieving sustainability. The final rule, identifies three separate classifications of land in section 219.28: (a) Lands where timber may not be harvested; (b) lands where timber may be harvested for timber production; and (c) lands where timber may be harvested for other multiple-use values.

Comment: Consistency with NFMA requirements. Some respondents wanted the proposed planning rule to include various specific provisions from NFMA. Other people voiced reservations regarding the criteria for determining lands not suited for timber production as detailed in the proposed rule. These criteria are too vague and should be eliminated, according to several people. Expressing a common sentiment among respondents, one wood products industry representative believed that ''interpretation of the phrases 'ecosystem integrity,' and 'lands where the costs of timber production are not justified by the ecological, social, or economic benefits,' would be costly and controversial at best, and most likely would contribute to further planning gridlock.''

Response: Criteria for lands where timber harvest may not occur are taken directly from NFMA section 6(e). In order to determine lands where timber harvest is an objective, the responsible official must complete the planning process to determine that the projected costs of timber production are justified by the overall benefits. The Department believes that these criteria are straightforward and legally sound. In the final rule, criteria for where timber may be harvested from lands not suited for timber production, include the term ''ecological sustainability'' instead of ''ecosystem integrity,'' and the rule elaborates on its meaning in 219.20. The rule also defers the determination of the need to harvest timber until site-specific information is available.

Comment: Land withdrawn form timber harvest. The proposed rule lists a number of lands not suited for timber production—one category being ''lands that have been withdrawn from timber harvest by the Secretary of Agriculture or the Chief of the Forest Service.'' Several respondents question this executive branch authority that they believe is reserved for Congress alone.

Response: Authority to withdraw land from availability for timber harvest may be undertaken by the Secretary of Agriculture or Chief of the Forest Service for specific reasons such as, but not limited to, public health and safety, accomplishments of other multiple-use objectives, and other appropriate uses of the land.

Comment: Lands where technology is not available for conducting timber harvesting. The proposed planning rule also describes lands ''where technology is not available for conducting timber harvesting * * *'' as another land-class not suited for timber production. One wood products industry representative recommends striking this provision based on the belief that ''technology is ever changing, and tomorrow systems will be available that we aren't even thinking of today.''

Response: This language is a requirement of NFMA. The fact that technology changes was recognized by the additional requirement in NFMA (and this section of the rule) to review lands determined to be not suited for timber production at least every ten years, or as prescribed by law.

Comment: Lands where the costs of timber production are exceeded by benefits. The proposed planning regulations defined one classification of lands not suitable for timber production as ''lands where the costs of timber production are not justified by the ecological, social, or economic benefits'' (section 219.28(b)(5)). Respondents raised a number of related concerns regarding this classification.

First, some believed that timber production costs should be exempted from consideration during suitability determinations for timber production because to do otherwise, they contended, would constitute a violation of NFMA suitability criteria. Second, a number of people asked the Forest Service to clarify what they mean by below-market cost timber sales. In other words, what ''costs'' are being considered in such determinations? Are they ecological, social, or economic? A possible solution offered by one respondent requires the Forest Service to conduct a cost-benefit analysis of ecological, social, and economic factors in conjunction with proposed timber removal actions. Third, if ecological, social, or economic benefits do not outweigh the cost of conducting a timber sale; such projects should be prohibited, according to some.

Response: Section 6(k) of the NFMA requires the Secretary of Agriculture to identify lands, which are not suited for timber production, considering physical, economic, and other pertinent factors. Under this authority, it is appropriate to consider the relative costs and benefits from timber production. In the final rule, regarding lands that are not classified as unsuitable for timber, the responsible official may establish timber production as a multiple-use objective in the plan if the costs of timber production are justified by the ecological, social, or economic benefits. With regard to individual timber sales, no economic test is required on lands where timber production has been established as a plan objective based on plan-level analysis. On lands where timber production is not an objective, analysis must be used to determine that timber harvest is necessary to achieve other objectives. However, the Department does not believe this rule should limit use of timber harvest as a management tool in these situations based on the ability to recover economic costs.

Comment: Lands where timber harvest is permitted. Several respondents argued that in order to achieve the goals of multiple-use sustained-yield, the Forest Service must require active timber management through its planning regulations. For some, this even meant harvesting timber from roadless areas. In addition to the statutory foundation for this position, these individuals cited the need to improve both forest health and wildlife habitat.

Response: Plans prepared pursuant to this planning regulation may, in response to issues that have been identified, require active timber management to achieve their objectives, the Department does not believe that it is appropriate to mandate such action on each national forest and grassland at the national level. The planning rule provides ample direction and opportunity for the responsible official to provide for timber production.

Comment: Salvage and Sanitation harvests. A few people asked the Forest Service to clarify the language of section 219.28(d), which, according to one person, ''seems to allow salvage logging on all national forest lands not protected by wilderness status.'' The bottom line for these individuals is that the Forest Service needs to clearly differentiate between salvage, sanitation, and green timber harvests. However, assuming that the proposed rule does, in fact, allow salvage logging on all non-wilderness lands, other respondents urged the Forest Service to eliminate salvage and sanitation harvests entirely. They questioned the efficacy of such harvests to actually control fires or curb insect infestations. They also cited perceived past abuses of the salvage sale program as reason enough to be skeptical of the program in the future. In contrast, others supported planning rule provisions for

salvage and sanitation harvests. These, they claimed, are essential to local economies and to improving forest health.

Response: Both sanitation and salvage harvest of timber are legitimate, tested, silvicultural practices that may be appropriate to curb or manage the harmful impacts of undesirable insect and disease attacks. The Department believes that the language in this section on suitability is appropriate regardless of the kind of timber harvesting activity. The reference to the sanitation and salvage harvest has been removed from this section. No exceptions are made for salvage and sanitation harvests in this rule. They will be allowed on lands where timber may be harvested for timber production, and on lands where it may be harvested for other values as long as the criteria for harvest from such lands are met. NFMA requires keeping separate records of salvage and sanitation harvest volume.

New language has been added to section 219.29 which states, based on NFMA: ''For purposes of limiting the amount of timber harvest, the harvest of timber from areas that are substantially affected by fire, wind, or other events, or for which there is an imminent threat from insects or disease may either substitute such timber for timber that would otherwise be sold or, if not feasible, sell such timber over and above the plan volume * * *''

Other changes. The final rule emphasizes that a decision to harvest timber must be consistent with plan decisions, in accordance with section 219.10.

Paragraph (b)(2) in the proposed rule designated all lands that do not meet the definition of forested land as not suited for timber production. That provision is not in the final rule; rather, paragraph (b) allows a decision on such lands to be based on an evaluation of the costs and benefits of timber production. Lands that do not meet the definition of forested land are by their nature, not suitable for timber production. NFMA requires that lands determined to be not suitable for timber production be reviewed at least once every ten years. In accordance with paragraph (b), all lands other than those selected pursuant to this paragraph are not suited for timber harvest, and subject to this review requirement.

Proposed Section 219.29—Limitation on timber harvest. This section of the proposed rule required the estimation of the long-term sustained-yield capacity of timber. In addition, it provided for the calculation of an allowable sale quantity for any decade that departs from the projected long-term average sale quantity.

Comment: Exceeding sustained-yield limits. Most respondents agreed that the concept of sustained-yield is, in principle, a positive goal. However, some people took exception to how this actually will be implemented through the proposed regulations. For example, some saw section 219.29(c)(2) as providing a loophole for truly sustainable timber removal. These people argued that this section allows the responsible officials the discretion to exceed sustained-yield limits ''whenever they want as long as the sale is disclosed.''

Response: The text of the proposed rule regarding the procedures that must be used when a departure in timber harvest levels is necessary is not retained in the final rule. Because this text was taken from the language of NFMA, it is believed that in the rare circumstance when a departure in projected timber harvests may be necessary, it is best to rely on the exact language of NFMA. Also, the calculation for long-term, sustained-yield limitations is separated into two categories in the final rule. The first is a limitation on the harvests that may take place from timber production lands. The second is a limitation on the harvests that may take place for the removal of timber to accomplish multiple-use objectives other than timber production. The two calculations cannot be combined to increase harvest levels from either category of land.

Comment: Ecologically sustainable timber harvest. Some respondents urged the Forest Service to adopt specific standards and criteria to achieve ecologically sustainable timber harvests. Several respondents suggested possible means to this end: adopting guidelines to ensure a diversity of tree age classes on national forests rather than simply evaluating sustainable biomass removal; measuring sustained-yield at a finer scale than the current provision that allows combining forests less than 200,000 acres in size; or using the Sustainable Fisheries Act as a model for sustainable logging. Sections 219.29(a) and (c) of the proposed rule used the term ''perpetuity.'' One respondent wondered how ''perpetuity'' will be calculated-is this a mathematical estimation and who would determine this figure?

Response: In accordance with section 219.20, plans must provide for ecosystem diversity, which includes many characteristics such as distribution and abundance of successional stages of vegetation. The Department intends and believes that timber harvest levels that result from implementation of this rule will be consistent with ecological sustainability.

Comment: Allowable sale quantity. Many public concerns centered on the concept of allowable sale quantity (ASQ). Some saw the proposed rule as a detrimental move away from existing ASQ requirements, which were thought to be important for sustaining the economies of timber-dependent communities. Moreover, one wood products industry representative contended that pursuant to NFMA requirements, the proposed rule should require that ASQ determinations be made at the forest level and that ''any significant up or down departure from planned allowable sale quantities should trigger a forest plan amendment.'' In contrast, others requested that ASQ provisions be entirely eliminated from the proposed rule or revised to require that ASQ determinations reflect salvage and sanitation harvest volumes.

Response: The topic of ASQ has long caused confusion for those concerned with the management of the national forests. NFMA authorizes, but does not require, the establishment of an ASQ where it is necessary to plan harvest of more timber in a decade than what could be removed on a sustained-yield basis (16 U.S.C. 1611). The current planning rule required the establishment of an ASQ for every plan based on its projected sale schedule (36 CFR 219.16(b)). In accordance with NFMA, both the sustained-yield quantity (long-term sustained-yield capacity) and ASQ were intended to impose limits on the sale of timber from a national forest rather than to establish targets. Nevertheless, many individuals have viewed ASQ as a target to be achieved. However, many factors beyond the control of the agency have influenced and will continue to influence actual harvest levels. These include the budget received from Congress, new listings and designations of critical habitat under the Endangered Species Act, weather, and the requirements of other statutes and Executive Orders.

The proposed rule, while not requiring the establishment of an ASQ, did require the establishment of a long-term sustained-yield capacity at the forest level, which set the upper cap on the sale of timber from lands where timber production was an objective. In addition, the proposed rule required that plans contain a display of actions, outcomes, and projected products and services that could be used for reasonable estimates of likely timber

harvest levels. These provisions are retained in the final rule. In addition, a limitation on the amount of timber that may be removed from lands unsuited for timber production is added to the final rule. Language from NFMA has been added to clarify the relationship of salvage and sanitation sales to harvest volume limits. To simplify the text and acknowledge the intended limited use of the term, ''allowable sale quantity,'' it is no longer used in the rule, but may be found in the referenced section of NFMA.

Comment: Logging methods. Logging methods and techniques were very important for many who comment on the proposed planning rule. In order to ensure minimal environmental impact during logging activities, some suggested using small equipment for timber cutting and removal procedures. One person requested that the Forest Service design timber harvest units to mimic stand composition and structure created by natural disturbance events. Indeed, to some, mimicking disturbance events requires an explicit commitment by the Forest Service to continue the practice of clearcutting. Clearcuts, they claimed, contribute to a multi-age forest structure and serve as habitat for a variety of wildlife species. Still, there must be limits on individual clearcut size, some argued. One person suggested using the Committee of Scientists report as a guide for establishing size limits based on the characteristics of natural disturbance regimes. Many other respondents called for a complete ban on clearcutting in national forests. To them, clearcuts are ecologically destructive and reduce the capacity of forests to act as wind buffers for human communities in some regions of the country.

Response: Clearcutting is a legitimate and sometimes needed silvicultural tool for managing certain forested landscapes. Forest silviculture and ecosystem disturbance ecology support this view. At the same time, the Department shares the concerns over inappropriate application of clearcutting. The Department is confident that the planning framework and the collaborative, science-based approach to ecological diversity it contains will result in clearcutting being used appropriately. It remains agency policy that clearcutting be used only when and where it is appropriate and fully supported by science.

Other changes. Paragraph (a) in the final rule requires calculation of the amount of timber that could be sold in perpetuity on a sustained-yield basis from lands where timber harvest is not prohibited. In the proposed rule, this calculation was required only for those lands where timber production was identified as an objective. NFMA does not make this distinction, and in the final rule the requirement applies to all lands not identified in paragraph (a). Estimates for lands that may be harvested for other purposes may be difficult to make and less reliable than for timber production lands. For that reason, and to avoid excessive harvest from either type of land, the volume estimates for the two areas may not be combined. Paragraph (b) imposes separate limits on the volume that may be sold from lands that are suited for timber production and those lands that are not suited for timber production, but available for the harvest of timber to fulfill other multiple use objectives.

Planning Documentation

Proposed Section 219.30—Land and resource management plan documentation. This section of the proposed rule described the documentation requirements for the plan, including the summary document, a display of land suitable for selected uses, a display of decisions for the plan area, a list of actions to achieve desired conditions, the minimum level of monitoring and evaluation, a display of budgetary information, and a list of reference materials. In the final rule, this section has been renamed ''Plan documentation.''

Comment: Many people found the ''living document'' idea appealing although they doubt the ability of the Forest Service to meet the goals set out in this subsection of the proposed rule. Some people claimed that ''existing forest plans are already living documents'' due to rapidly changing conditions which require revisions. Other people questioned the ability of the Forest Service to keep up with expectations outlined in the proposal. ''This is a lot of disparate information to keep track of, connected, integrated, and continually updated.'' A few respondents asked how the documentation will work and how it will be organized. Will the living document result in ''the same sort of unintelligible documents that appeared during the first round of planning,'' another person asked? Others had specific suggestions for the kind of budget and output information to include.

Response: In general, section 219.30 of the final rule retains the language in the proposed rule. The Department does not view the plan documentation as an undue burden. The items to be displayed already exist within agency records. By following the plan documentation process, information relative to plan and site-specific decisions as well as future implementation would be readily available to the public. The intent of this section of the rule is to provide one location for all the documents that pertain to plan decisions on the forest or grassland. As noted in the Committee of Scientists Report, the integrated plan is the assemblage of all policies and decisions affecting an administrative unit. The Department agrees with the comment that forest plans currently can be viewed as ''living documents.'' However, the Department believes that the planning structure outlined in the final rule provides for more timely and flexible planning based on the appropriate scale of the issue.

Other Changes. The term ''guidelines'' in the proposed rule has been removed from this section in the final rule. There was some confusion about the terms ''standards and guidelines'' and their meaning in the proposed rule. The term ''standards'' has been retained in the final rule. New language is added in the final rule referring to ''maintenance or restoration of sustainability.'' This language has been added to emphasize the goals of sustainability in the final rule. The language referring to ''watershed protection or restoration'' in paragraph (a) from the proposed rule is removed in the final rule. The Department believes that the language in the final rule referring to ''ecological'' environments within the plan area encompasses watershed protection and restoration.

Some editing and clarifying changes to paragraph (b), ''Display of public uses,'' and paragraph (c), ''Plan decisions,'' are made in the final rule. There is also some editing and clarifying changes to paragraph (d), ''Display of actions and outcomes.'' Paragraph (d)(4), regarding the projected range of outcomes for uses, values, and services is changed from 10-year projection in the proposed rule to a 15-year projection in the final rule to coincide with the required revision schedule for plans.

Proposed Section 219.31—Maintenance of the plan and planning records. This section of the proposed rule described the requirements that keep plans up-to-date and readily available to the public. It also described the types of administrative changes to plans that are considered maintenance.

Comment: Many people believed that the maintenance of planning documents under the proposed rule would become an insurmountable obstacle to effective management. They were concerned about the staff time it will take to comply with the reporting periods. One

person wrote that at a two-year cycle for documentation maintenance would be a better use of staff time. Others argued that posting the entire plan record on the Internet is not feasible. Some people requested that complete sets of documents be maintained at district offices. Distances can sometimes be ''unduly burdensome for staff and citizens to have to travel to the Supervisor's office,'' they asserted. Some respondents feared that special interest groups would be able to unduly influence management by initiating revisions. Other people felt that stability is more important than flexibility in a forest plan.

Response: The Department believes it is reasonable to expect the requirements under this provision to be successfully followed by the Forest Service. The documents should be available in an electronic format. However, the reference to the Internet in section 219.31(a) in the proposed rule has been eliminated from the final rule to allow for development and use of other applicable electronic media for information exchange. The Department has removed the language in section 219.31(b) of the proposed rule referring to ''complete and current data'' associated with planning records. This language was removed because these terms have specific legal interpretations.

The Department has also added a new item (4) under subsection (b) that would exempt changes in monitoring methods from Forest Service NEPA procedures. The Department made this change to make sure that any changes in monitoring methods would be considered administrative corrections, and not plan revisions or amendments subject to NEPA.

Objections and Appeals

Proposed Section 219.32—Objections to amendments or revisions. In the proposed rule, this section described the process by which the public could challenge plan revisions or amendments. This process will provide the public an opportunity to challenge Forest Service planning prior to the responsible official making a final decision. This section requires the responsible official in the planning process to respond to all objections prior to approving an amendment or revision of the plan. This process will provide the Forest Service and the public with an opportunity to address issues before a final decision is made.

Comment: Objection process. Many people feared the objection process would reduce the influence that the current appeals process provides to some individuals. They claimed the 30-day objection period is insufficient time to identify issues and generate an administrative record. Many believed the proposed objection process would undermine their ability to establish standing for possible litigation. Although some respondents felt that the objection process is an inadequate protection of public interests, others felt that requirements for standing should be much more stringent to prevent needless obstruction. Many respondents noted that there is no time limit for the agency to respond to objections. To achieve conflict resolution and efficiency in the objection process, ''time limits are essential,'' wrote one individual. However, one forest products industry representative believed that the pre-decisional objection process would allow managers to implement decisions without ''excessive appeals.''

Response: The objection process applies only to amendments and revisions of a land and resource management plan. The process recognizes the interest of people engaged in stewardship and the achievement of sustainability is grounded in the recommendations of the Committee of Scientists. It furthers the intent of the collaborative dialogue outlined in sections 219.12 to 219.18 and supports the premise of the problem-solving and decisionmaking model envisioned in the framework for planning (sections 219.3 to 219.11). The process complements and is consistent with the maintenance of established relationships, commitments, and responsibilities necessary to continuing solving problems for effective stewardship prior to finalizing a pending plan amendment or revision.

The final rule, as a whole, addresses the weaknesses in the current 36 CFR part 217 appeal process through integration of the objection process with the framework for planning (sections 219.3 to 219.11) and supplementing traditional NEPA public involvement with collaborative planning for sustainability (sections 219.12 to 219.18). In the long run, the objection process is expected to resolve many potential conflicts. The purpose of the objection process is to encourage resolution of issues before decisions are made. The intent is to provide the reviewing officer with an opportunity to work more closely with the responsible official and those filing objections to resolve the objections before a decision is made. A predecisional objection process will also enhance interagency collaboration by standardizing objection procedures and provide incentives to work out substantive differences rather than focus on procedural errors.

Critical to the success of the objection process is the active effort of the responsible official and others to engage in early and frequent opportunities for public involvement and dialogue. An objection must be filed, in writing, within 30 calendar days of public notice of the appropriate NEPA documentation. The 30-day objection period mirrors a similar existing process used successfully by the Bureau of Land Management, and the Department feels that it should not prove a barrier to those who wish to utilize it—particularly if they have been involved in the collaborative processes. Establishing a time limit for the agency to respond to objections would burden the collaborative process with an unnecessary constraint. The focus of the objection process is on joint problem solving to resolve issues, not on pressing a decision to meet an artificial deadline.

Comment: Current appeals process. Many respondents argued for the retention of the current appeal process. They felt that appeals ensure cumulative analysis, allow public oversight of Forest Service policy, and are a citizen's right. Changing the process, some declared, will destroy confidence in the integrity of the Forest Service. Many people believed an appeals process provides the option to resolve conflict before litigation becomes necessary.

Response: Under the current 36 CFR part 217 appeal process, the agency and the public expend significant human and financial resources in fulfillment of procedural requirements. Under the existing rule, some individuals and interest groups have little trust in the integrity of the current process and perceive they have a better chance of achieving their interests through costly appeal and litigation processes. Often, a polarized relationship develops where there is no real incentive to address natural resource issues, creating a cycle of ''bulletproofing environmental documentation'' and expending both human and financial capital, often without long-lasting solutions. The objection process provides for the consideration of a pending plan amendment or revision without restricting citizens' legal rights. The responsible official, the reviewing officer and the objector have the opportunity to seek reasonable solutions to conflicting views before a plan amendment or revision is adopted.

Comment: Analysis of prior appeals. Some respondents suggested that the Forest Service address prior appeals

against Forest Service decisions as part of the proposed planning rule. They believed that interviews with people who filed appeals should be incorporated into the planning process.

Response: Appeals and the concerns of national forest and grassland users were considered in the development of the final planning rule. The team that developed the proposed rule and response to public comment based their work on years of experience in addressing the concerns of interested citizens. The increased emphasis that the planning rule places on collaboration is a direct response to improve working relationships among interested citizens. In the objection process, the reviewing officer can step in and review the procedures as well as the substance of a pending decision and seek a suitable resolution of an objection.

Subparagraph (b) has been added to the final rule which provides for objectors and other parties to participate in meetings with the responsible official to discuss their objection, narrow differences, agree on facts, and explore opportunities for resolution. Any person would be allowed to object to a pending decision. The objection submittal requires copies of all documents addressing the issue or issues that were submitted during the planning process by the objecting party or an indication of the date the issue or issues were discussed for the record. Unlike the current 36 CFR part 217 rule, the objection process in section 219.32 of the final rule does not have a specific time limit for resolving objections. The current appeal process prevents a higher level intervention or participation in issue resolution or problem solving because of the need to avoid ex parte communication by higher-level reviewing authorities and also to maintain an independent, objective review of the record, at the higher level of appeal. Under the objection process, to expedite resolution of any objection, the responsible official would not be allowed to approve an amendment or revision under objection until a decision on the objection has been reached and documented in an appropriate decision document. Also, the reviewing officer must promptly render a response, in writing, setting forth the rationale for the response. The reviewing officer's response regarding an objection is the final decision of the Department of Agriculture.

Other changes. The Department added new language in paragraph (a) in the final rule, which requires the responsible official to publish notice of all objections in a newspaper of record. This language was added to ensure that the list of objections would be disclosed to the public. The Department removed the section of paragraph (b) in the proposed rule pertaining to the Notice of Intent and multi-agency planning. The Department believes that this language is not necessary in the final rule. The Department also removed paragraph (c) of the proposed rule pertaining to review and final response to an objection. The Department determined that the objection process should not be viewed as a legal process.

Proposed Section 219.33—Appeals of site-specific decisions. This section of the proposed rule addressed appeals of site-specific decisions. The appeal process is the same as the existing requirements provided in 36 CFR part 215.

Comment: Although many people wanted to keep the existing appeals process, some felt that the objection process is a good direction for the Forest Service and is appropriate for site-specific decisions as well. Others believed that the Forest Service must clarify the relationship between the pre-decision objection process for plan decisions and the appeal process for site-specific decisions. A few people argued that objection process violates due process requirements for site-specific decisions.

Response: While there is merit in having an objection process for site-specific decisions, amending the appeal process is beyond the scope and authority for developing these planning regulations under the NFMA. For this reason, the administrative appeal process for site-specific decisions remains unchanged in the final rule.

The Department added language to this section to clarify the relationship between the objection processes for plan decisions and the appeal process for site-specific decisions. Other revisions have been made to incorporate changed terminology.

The Department does not believe that objection process violates due process requirements for site-specific decisions. The agency's NEPA procedures provides for both public comment and appeal of site-specific decisions.

Applicability and Transition

Proposed Section 219.34—Applicability. This section of the proposed rule provided that the direction in the rule applied to all units of the National Forest System and remains unchanged in the final rule. The agency did not receive any specific comments on this section.

Proposed Section 219.35—Transition. This section of the proposed rule addressed the shift in planning from the use of the existing regulation to the new rule, including the initiation of transition, the length of time existing plans remain in effect, the review of unsuitable land for timber production, the timing for completion of ongoing amendment or revision efforts, the relationship between transition and site-specific decisions, and the withdrawal of regional guides. This section outlined the process by which the Forest Service will transition from the 1982 planning regulations.

Comment: Many respondents requested a clear distinction between forest plans and project-level plans in terms of when they must conform to requirements in the proposed rule. Existing NEPA regulations still apply to project plans, stated one person. In addition, the application of the proposed regulations to recently revised forest plans was a significant concern of many people. One respondent said that the new regulations could overturn environmental safeguards developed in revised forest plans. Some commented that a timeframe must be set in order that proposed projects, which can take years to develop, don't come into conflict with forest plans under the new regulations.

Response: The final rule adequately describes the relationship between plan decisions, site-specific decisions, and the agency's NEPA procedures. The transition from the existing regulations to the new rule and the relationship between transition and site-specific decisions is addressed in section 219.35. The Department does not believe that the new rule could overturn environmental safeguards developed in revised forest plans. For site-specific decisions, section 219.35(d) provides a three-year time period for transition between the existing regulations and the new rule.

Comment: The use of Regional Guides after implementation of the proposed planning regulations should be discussed in more detail some contended. One respondent suggested that Regional Guides should be withdrawn ''on a forest-by-forest basis.'' Another requests they not apply until the next scheduled plan revision. Several people asserted that provisions must be in place to prevent delays in revision of forest plans through ''endless extensions.'' On a separate note, one person wanted requirements for evaluating suitability for multiple-uses specified in the transition section instead of ''just sustainability.''

Response: The management direction contained within each Regional Guide would be transferred to the Forest

Service directives system or to applicable plans. The direction contained within Regional Guides will be used to develop plan revisions. Section 219.35(f) of the final rule provides that the Regional Forester will have 1 year from the effective date of this rule to withdraw the regional guide. In regard to the comment about delays in planning, the rule provides a transition framework that will expeditiously amend or revise existing forest plans. In addition, the rule establishes a framework for incorporating this new planning structure into project planning as well as forest and grassland plans. In regard to the comment about suitability, the identification and designations of suitable uses will be implemented in accordance with Section 219.26 of the final rule. It is the intent of this rule to provide that suitable uses will be evaluated during the transition period.

Other Changes. Some editing and clarifying changes are made to this section of the final rule. In addition, the Department has added new text in paragraph (a) of the final rule requiring the responsible official to consider the ''best available science to implement, and, if appropriate, amend the current plan.'' This text is added in the final rule in order to require the Forest Service to incorporate the best science within current plans. The Department intends this to be incorporated within existing forest plans that have been prepared under the 1982 planning structure, too.

New text in paragraph (b) of the final rule is added to allow for the completion of an ongoing plan amendment or revision under the 1982 rule if an environmental assessment or draft environmental impact statement has been issued within six months of the effective date of the new planning rule. The responsible official may complete the amendment or revision under the new rule. This addition to the final rule was made to ensure that ongoing plan amendments or revisions nearing completion were not delayed. Implementation of the new planning rule would take place as described by the transition process.

New language in paragraph (e) requiring the Regional Forester to withdraw the regional guide within one year of the effective date of the regulation is added to the final rule. The language in the proposed rule that required all the forests within a region to complete their revisions prior to withdrawal of the regional guide has been removed. This change was made to ensure the expeditious withdrawal of regional guides. The information in the regional guide will be transferred to a regional supplement of the Forest Service directives system or to existing forest plans. Public notice for these actions will be announced in the **Federal Register**. The Department has included new language in paragraph (f) of the final rule that provides for the transfer of information from the regional guide to other plans does not constitute new decisionmaking subject to additional Forest Service NEPA procedures.

A new subparagraph (g) is added to the final rule that requires the Chief of the Forest Service to prepare a schedule for completion of the plan revisions within one year. This section was moved from section 219.9, Revision, of the proposed rule to this section in the final rule. The change was made to emphasize this is one of the major responsibilities during the transition period. This language will enable the Chief of the Forest Service to prioritize plan revisions and provide the necessary resources to complete them in a timely manner.

Definitions

Proposed Section 219.36—Definitions. This section of the proposed rule defines terms used in the rule. This section has been retained in the final rule, with some changes in terms.

Comment: Many people requested that a variety of terms be defined this section of the proposed planning rule. Other respondents offered specific comments regarding the need for the clarification of terms already defined in the proposed planning regulations.

Response: The changes in the definitions and terms from the proposed rule to the final rule are as follows:

Assessment or analysis area. The definition of assessment or analysis area was retained from the proposed rule, with some minor clarifying language. The term ''geographic'' has been added to describe the area of analysis.

Broad-scale assessment. The proposed rule included a definition for this term. The definition of broad-scale assessment has been moved to section 219.5(a) of the final rule.

Candidate species. The term candidate species has been retained in the final rule. The phrase ''a list of such species prepared by the USFWS and published in the Federal Register'' has been removed. The Department believes that this language is unnecessary and redundant.

Conservation agreement. The term conservation agreement was defined in the proposed rule has been retained in the final rule. There are no changes to the definition.

Current climatic period. This term has been added to the final rule. The Department believes that this term is important to understand the timeframe for species and ecosystems within the final rule.

Demand species. This term was defined in the proposed rule. It has been removed from the final rule. The Department believes that the final rule should concentrate on protection of species that may have viability concerns. Demand species, as defined in the proposed rule, may not have viability concerns.

Desired condition. This term has been modified in the final rule by deleting the phrases pertaining to the description of the range of natural variability. The Department removed this language because there is a new definition for range of variability.

Desired non-native species. This term has been modified in the final rule to recognize that non-native species can have ''high social, cultural, or economic value.'' This term could include ''demand species,'' as defined in the proposed rule.

Disturbance processes. This term has been changed from ''disturbance processes'' to ''disturbance regime'' in the final rule. The Department believes that this term better describes disturbances. The Department also removed the term ''land use development'' from the list of human caused disturbances. The Department believes that the list of disturbances in the final rule describes all of the activities that could occur on national forests and grasslands.

Diversity of plant and animal communities. The Department has retained this term in the final rule.

Ecological composition. This term, which was defined in the proposed rule, has been removed from the final rule. The Department believes that the characteristics of ecological composition are defined in the definitions for the terms ecosystem composition, ecosystem processes, and ecosystem structure.

Ecological conditions. The Department has removed the term ''ecological sustainability'' from the list of components of the biological and physical environment. The term ''ecological sustainability'' has been defined in the final rule. The Department has also added the phrase ''abundance and distribution'' to the list of ecological conditions. This phrase was added to ensure that planning takes into consideration these factors in identifying ecological conditions.

Ecological sustainability. This term, which was defined in the proposed rule,

has been retained in the final rule with some modifications. The Department has removed the language in the proposed rule referring to ''plan area.'' The Department believes that this definition should not be limited to only the plan area.

Ecosystem. This term, which was defined in the proposed rule, has been removed from the final rule. The Department believes that this term is adequately defined within the definitions of ecosystem structure, ecosystem processes, and ecosystem composition.

Ecosystem composition. The Department has added this definition to the final rule to clarify what ecological elements are included within this term.

Ecosystem integrity. This term has been removed from the final rule. The Department believes that the terms ecosystem composition, ecosystem processes, and ecosystem structure provide adequate definitions for this term in the final rule.

Ecosystem processes. The Department has added this term to the final rule. The Department believes that it is important for participants in the planning process to have an understanding of the elements of ecological processes.

Ecosystem structure. This term was defined in the proposed rule. It has been retained in the final rule, with some modifications. The Department has removed the language listing the specific characteristics for identifying ecosystem structure. The Department believes that this information is not necessary.

Focal species. The proposed rule did not define this term. The Department has added this term to the final rule because of its importance in determining viability of species. This is a term that is used broadly by the scientific community.

Forest Service NEPA procedures. The Department has retained this definition in the final rule.

Historical range of variability. The Department has removed this term from the final rule. It has included a new definition for range of variability in the final rule. The Department removed this term because it wanted to ensure that range of ecosystem processes considered in the new planning process are within the current climatic period, but not limited to pre-European settlement time period.

Inherently rare species. This term was not defined in the proposed rule. The Department has added this term to the final rule. The Department has defined this term because it is important for the agency and public to understand that there may be species that are ''rare'' because of natural circumstances.

Inventoried roadless areas. The Department has added this term in the final rule. This was done to further clarify the terms of ''roadless areas'' and ''unroaded areas'' in the proposed rule and make the definition consistent with Forest Service Roadless Area Conservation Draft Environmental Impact Statement Summary and Proposed Rule, dated May 2000.

Local analysis. The Department has removed this definition from the final rule. This term is defined in Section 219.5, Information development and interpretation.

Major vegetation types. The Department has added a definition of this term to the final rule. This term was added to describe the predominant plant communities within a region or sub-region.

Native species. The Department has made minor editorial changes to this definition in the final rule. The substance of the definition remains unchanged.

Plan area. This term was defined in the proposed rule. It is defined in the final rule, with some modifications. The Department has added the term ''geographic.'' The Department believes that this addition is important for describing the plan area.

Productive capacity of ecosystems. The Department has changed this term to ''productive capacity of ecological systems'' in the final rule. The Department believes that this better describes ecosystem processes in the planning structure.

Range of variability. The Department has added this term to the Definition section in the final rule. As mentioned above, the definition on historical range of variability is no longer included in the final rule. The new definition states that the natural disturbance regimes are in the current climatic period. The Department believes that this language better characterizes the range of variability for planning on national forests and grasslands.

Reference landscapes. The Department has redefined this term in the final rule. The Department removed the phrases referring to ''historical range of variability'' and ''terrestrial and aquatic areas.'' The Department has added new language that describes the ''reference landscapes'' as places within the ''plan area.'' The Department believes that this new language better describes the types of reference landscapes that can be used in the planning process.

Responsible official. The Department has modified this definition in the final rule by removing the language referring to more than one line officer. The Department believes that this phrase is not necessary. The Department has also removed the language referring to ''line officer,'' and has added new language that provides for the responsible official to be the person who oversees the planning process.

Reviewing officer. The Department has added this term in the final rule. The Department wanted to clarify who this individual is and what their responsibility is in the planning framework.

Roadless areas. The Department has renamed this term ''inventoried roadless areas'' to further differentiate it from unroaded areas.

Salvage harvest of timber. The Department has removed this definition from the final rule. The Department believes that it is not necessary to specifically define this term.

Sanitation harvest of timber. The Department has removed this definition from the final rule. The Department believes that this term does not need to be defined in the final rule.

Sensitive species. The Department has removed this definition from the final rule. The term is only referred to in the Definition section for ''species-at-risk'' in the final rule and the Department believes it is not necessary to specifically define it.

Social and economic sustainability. The Department added this definition in the final rule based on public comment.

Species. The definition in the proposed rule stating that ''any native taxon of the plant or animal kingdom'' is defined as a species has been changed in the final rule to ''any member of the plant or animal kingdom.'' The Department made this change to broaden the definition to include native and non-native species.

Species-at-risk. The Department has defined this new term in the final rule. The Department wanted to clarify that these are federally listed and other species that have a viability risk within the plan area.

Species viability. The Department has retained this definition in the final rule, with some modifications. The Department has removed the language in the proposed rule referring to the ''genetic diversity'' of self-sustaining populations. The Department removed this language because it believes that viability should be interpreted in the broadest manner.

Successional stages. The Department has added this term to the final rule. The Department believes there is a need to define the various phases of

vegetation development within the context of sustainability.

Timber production. This definition is unchanged from the proposed rule.

Undeveloped areas. This term was added to the final rule. This term refers to all areas of sufficient size that are ''untrammeled'' by human beings that are appropriate to evaluate for wilderness designation in the planning process.

Unroaded areas. This term is revised to be consistent with the definition used in Forest Service Roadless Area Conservation Draft Environmental Impact Statement Summary and Proposed Rule, dated May 2000.

Vegetation Management. This term has been removed from the final rule. The term is defined within the content of sections 219.4, Identification and consideration of issues, 219.28, Determination of land suitable for timber harvest, and 219.29, Limitation on timber harvest.

Watershed integrity. This term has been removed from the final rule. It is defined within the content of section 219.20, Ecological Sustainability.

Regulatory Certifications

Regulatory Impact

This rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not an economically significant rule. This rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor state or local governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. However, because of the extensive interest in National Forest System planning and decisionmaking, the Office of Management and Budget has determined this rule to be significant and thus, subject to OMB review under Executive Order 12866.

The cost-benefit analysis focused on key activities in land and resource management planning for which costs could be estimated under the existing and final planning rules. Those major activities included regional guides, land and resource management plan revisions, land and resource management plan amendments, and advisory committees. The final rule would reduce costs by eliminating regional guides and reducing the length of the planning process. Increased costs would result from new requirements for FACA-type advisory boards and science advisory boards. The cost of broad-scale assessments will also be a new planning expense, which is assumed to be at least equal to the cost of maintaining regional guides. Based on the quantified costs, the final rule is estimated to result in an average annual cost savings of $2.4 million compared to the existing rule. This estimate is a conservative estimate of cost savings, since it is assumed that the cost of significant amendments under the existing rule is zero (based on the rarity of application), and no cost savings are estimated as a result of improved efficiencies, streamlined processes, and reduced litigation costs because of improved methods for dealing with planning conflicts. The cost-benefit analysis can be obtained by contacting: the Director, Ecosystem Management and Coordination, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 205–1697.

Moreover, this rule has been considered in light of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), and it has been determined that this rule will not have a significant economic impact on a substantial number of small entities as defined by that Act. The rule imposes no requirements on either small or large entities. Rather, the rule sets out the process the Forest Service will follow in planning for the management of the National Forest System. The rule should increase opportunities for small businesses to become involved in both site-specific and national forest and grassland plan decisions. Moreover, by streamlining the planning process, small businesses should see more timely site-specific decisions that affect outputs of products and services.

Eight comments from law firms or representatives of small mining operators, outfitters and guide permit holders, and small timber companies challenged the Forest Service assertion that the proposed rule, if adopted, would not have a significant economic impact on small businesses and other entities. Several of these reviewers asserted that the shift to ecological sustainability would result in reductions in resource allocations and thus would have severe adverse effects on small businesses and communities within and adjacent to National Forests. One commenter also challenged the assertion that the proposed rule streamlined the planning process. One organization representing the 8,000 recreation outfitters and guides operating under permit on the national forests and grasslands contended that the proposed planning rule would reduce recreation opportunities with corollary reductions in commercial outfitting and guiding.

Several representatives of small mining operators also asserted that the proposed planning rule, in combination with actions by the Bureau of Land Management, would violate the small miners Constitutional rights. Finally, all these respondents quoting various provisions of the Regulatory Flexibility Act, believed that the Forest Service had not complied with the Act, either by not preparing Initial Regulatory Flexibility Act, or not presenting a factual basis for why an IRFA was not required.

The Department finds that the planning rule would not result in a significant economic impact on a substantial number of small entities as defined by the Small Business Act. Those who allege severe shifts in resource allocations have not offered facts and data to prove their point.

This planning rule establishes a process for planning of national forest and grasslands and does not directly regulate any business. The process that is being established under this rule offers greater opportunity for small entities to actively participate in the planning process than in the past. Forest dependent businesses and communities may choose to become involved in planning if the issues are relevant and important to them.

No Takings Implications

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the rule does not pose the risk of a taking of Constitutionally protected private property. This rule establishes a process for amending and revising land and resource management plans for national forests and grasslands. Several respondents commented that the proposed regulations would impose ''takings'' of private property. After careful review of the proposed and final regulations, the Department finds that there are no ''takings'' implications by this rule. As stated previously, the rule establishes a process and only applies to national forests and grasslands, not private property.

Civil Justice Reform Act

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. As adopted, (1) all state and local laws and regulations that are in conflict with this rule or which would impede its full implementation are to be

preempted; (2) no retroactive effect is given to this rule; and (3) it does not require administrative proceedings before parties may file suit in court challenging its provisions. Several respondents commented about the federal government's authority to preempt state and local laws. The Department has carefully reviewed this language and finds that this is entirely consistent with the legal responsibilities of the federal government.

Unfunded Mandates Reform

The President signed into law on March 22, 1995, direction regarding unfunded mandates. The Department has assessed the effects of this rule on state, local, and tribal governments, and the private sector. This rule does not compel the expenditure of $100 million or more by any state, local, or tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required. Several respondents commented that the proposed regulations imposed an ''unfunded mandate'' on state and local governments. The Department disagrees with this comment. These regulations do not impose any mandatory requirements on states, tribes, or local governments. These regulations only apply to land and management planning for national forests and grasslands. It is discretionary for state and local governments and tribes to participate in the planning process detailed in this rule.

Environmental Impact

This rule deals with the development and adoption of Forest Service land and resource management plan decisions as well as procedures for developing site-specific decisions that may include decisions regarding the occupancy and use of National Forest System land. An environmental assessment has been completed with a finding of no significant impact. Several respondents asked why the Forest Service did not prepare an environmental impact statement. As stated previously, the Department prepared an environmental assessment consistent with the National Environmental Policy Act. The environmental assessment prepared by the Forest Service includes a Cost-Benefit Analysis and Civil Rights Impact Analysis. The environmental assessment can be obtained by contacting: Director, Ecosystem Management and Coordination, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 205–1697. Subsequent NEPA documents will be written when land and resource management plans and site-specific plans are undertaken.

Controlling Paperwork Burdens on the Public

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or reporting requirements included in the rule have been approved by the Office of Management and Budget (OMB) and assigned control number 0596–0158.

Section 219.32 Objections and Appeals would establish a new process for citizens and groups to object to a forest plan amendment or revision decision. Instead of appealing a decision after it is made under the rules of 36 CFR part 217, the rule would allow interested and affected persons and groups to file an objection before the decision is made. The final rule also includes a provision for other parties to participate in the objection process. The objection process should be open and inclusive of all parties. In addition, language has been added to the final rule that provides for objectors and other parties to participate in meetings with the reviewing officer to discuss their concerns regarding a proposed plan amendment or revision. This is an opportunity for all parties to explore possible resolution of their concerns with the responsible official.

The rule sets out the information that an objector would need to provide in order to file an objection to a proposed decision. This information is the same information that is currently required by the rules at 36 CFR part 217, which provides post-decisional administrative appeal and review of land and resource management plan decisions. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB initialed number.

The agency received comments on this section for the proposed regulation. Respondents indicated that language in the proposed rule was nebulous and confusing. There were concerns stated for replacing the appeal process with a pre-decisional objection process and including site-specific decisions in the land and resource management plan. Respondents said that the direction for analysis and documentation would not reduce paperwork under the proposed rule.

The language in the final rule clarifies the language used in the proposed rule. The new objection process replaces the paperwork required in the appeal process with upfront discussions until the objection is resolved. Site-specific decisions are required to be identified in the two-year budgetary documentation of the Land and Resource Management Plan and be consistent with the planning processes. Site-specific decisions will continue to be conducted consistent with applicable NEPA procedures.

Use of Comments—Federalism

The agency has considered this rule under the requirements of Executive Order 12612 and made a preliminary assessment that the 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. Therefore, the agency has determined that no further assessment on federalism implications is necessary at this time. In addition, the agency has reviewed the consultation requirements under Executive Order 13132, which is effective on November 2, 1999. This Order calls for enhanced consultation with state and local governmental officials and emphasizes increased sensitivity to their concerns. In the spirit of these new requirements, the agency consulted with the Western Governors' Association and the Natural Resources Committee of the National Governors' Association for comments on a draft version of the rule. Representatives of the Western Governors' Association indicated that the rule fits the principles espoused in their organization's ENLIBRA policy, which encourages greater participation and collaboration in decisionmaking, focuses on outcomes rather than programs only, and recognizes the need for a variety of tools beyond regulation that can improve environmental and natural resource management. The National Governors' Association also has adopted the ENLIBRA policy. Many state and local government representatives attended town meetings on the proposed rule. Department representatives also met with and shared information about the proposed planning rule with the International City and County Management Association, National Conference of State Legislators, The Council of State Governments, National Association of Counties, Western Governors Association, U.S. Conference of Majors, and National League of Cities.

The rule calls for enhanced collaboration with state and local governments. Section 219.14 shows sensitivity to federalism concerns from a substantive standpoint. Under the rule, the responsible official must provide opportunities for involvement of state and local governments in the

planning process, including opportunities to participate in the identification and consideration of issues related to planning.

Respondents appreciated the consultation required with state and local governments in the proposed rule. One respondent felt the role of states and local governments was diminished by so much emphasis on collaborative relationships with the public. Respondents were concerned that public meetings on the proposed rule were not held in more local communities. In the context of planning activities, there was concern that this was the province of the city and county governments and that the Forest Service should not promote community organization around a set of agency determined goals.

List of Subjects

36 CFR Part 217

Administrative practice and procedure, National forests.

36 CFR Part 219

Administrative practice and procedure, Environmental impact statements, Indians, Intergovernmental relations, Forest and forest products, National forests, Natural resources, Reporting and recordkeeping requirements, Science and technology.

Therefore, for the reasons set forth in the preamble, and under the authority of 16 U.S.C. 551, chapter II of title 36 of the Code of Federal Regulations is amended as follows:

PART 217—[REMOVED]

1. Remove Part 217.
2. Revise Part 219 to read as follows:

PART 219—PLANNING

Subpart A—National Forest System Land and Resource Management Planning

Purpose and Principles

Sec.
219.1 Purpose.
219.2 Principles.

The Framework for Planning

219.3 Overview.
219.4 Identification and consideration of issues.
219.5 Information development and interpretation.
219.6 Proposed actions.
219.7 Plan decisions.
219.8 Amendment.
219.9 Revision.
219.10 Site-specific decisions.
219.11 Monitoring and evaluation for adaptive management.

Collaborative Planning for Sustainability

219.12 Collaboration and cooperatively developed landscape goals.
219.13 Coordination among federal agencies.
219.14 Involvement of state and local governments.
219.15 Interaction with American Indian tribes and Alaska Natives.
219.16 Relationships with interested individuals and organizations.
219.17 Interaction with private landowners.
219.18 Role of advisory committees.

Ecological, Social, and Economic Sustainability

219.19 Ecological, social, and economic sustainability.
219.20 Ecological sustainability.
219.21 Social and economic sustainability.

The Contribution of Science

219.22 The overall role of science in planning.
219.23 The role of science in assessments, analyses, and monitoring.
219.24 Science consistency evaluations.
219.25 Science advisory boards.

Special Considerations

219.26 Identifying and designating suitable uses.
219.27 Special designations.
219.28 Determination of land suitable for timber removal.
219.29 Limitation on timber removal.

Planning Documentation

219.30 Plan documentation.
219.31 Maintenance of the plan and planning records.

Objections and Appeals

219.32 Objections to amendments or revisions.
219.33 Appeals of site-specific decisions.

Applicability and Transition

219.34 Applicability.
219.35 Transition.

Definitions

219.36 Definitions.

Subpart B—[Reserved]

Subpart A—National Forest System Land and Resource Management Planning

Authority: 5 U.S.C. 301; and Secs. 6 and 15, 90 Stat. 2949, 2952, 2958 (16 U.S.C. 1604, 1613).

Purpose and Principles

§ 219.1 Purpose.

(a) Land and resource management planning guides how the Forest Service will fulfill its stewardship of the natural resources of the National Forest System to fulfill the designated purposes of the national forests and grasslands and honor their unique place in American life. The regulations in this subpart set forth a process for amending and revising land and resource management plans, hereafter referred to as plans, for the National Forest System and for monitoring the results of plan implementation under the Forest and Rangeland Renewable Resources Act of 1974, as amended by the National Forest Management Act of 1976, 16 U.S.C. 1600 *et seq.* The regulations in this subpart also guide the selection and implementation of site-specific actions. The principal authorities governing the development and the management of the National Forest System include: the Organic Administration Act of 1897, as amended (16 U.S.C. 473 *et seq.*); the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528 *et seq.*); the Wilderness Act (16 U.S.C. 1121 *et. seq.*); the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*); the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); the Forest and Rangeland Renewable Resource Act of 1974, as amended by the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*); and the Clean Water Act of 1948, as amended by the Federal Water Pollution Control Act Amendments of 1977 and the Water Quality Act of 1987 and other laws (33 U.S.C. 1251 *et seq.,* 1323 *et seq.*).

(b) The National Forest System constitutes an extraordinary national legacy created by people of vision and preserved for future generations by diligent and far-sighted public servants and citizens. These are the peoples' lands, emblems of the nation's democratic traditions.

(1) The national forests and grasslands provide a wide variety of uses, values, products, and services that are important to many people, including outdoor recreation, forage, timber, wildlife and fish, biological diversity, productive soils, clean air and water, and minerals. They also afford intangible benefits such as beauty, inspiration, and wonder.

(2) To assure the continuation of this array of benefits this regulation affirms sustainability as the overall goal for stewardship of the natural resources of each national forest and grassland consistent with the laws that guide management of these lands.

(3) Sustainability, composed of interdependent ecological, social, and economic elements, embodies the principles of multiple-use and sustained-yield without impairment to the productivity of the land. Sustainability means meeting needs of the present generation without compromising the ability of future generations to meet their needs. Planning contributes to social and economic sustainability without compromising the basic composition, structure, and functioning of ecological

systems. The progress toward achievement of sustainability is assessed through monitoring and evaluation.

§ 219.2 Principles.

The planning regulations in this subpart are based on the following principles:

(a) The first priority for planning to guide management of the National Forest System is to maintain or restore ecological sustainability of national forests and grasslands to provide for a wide variety of uses, values, products, and services. The benefits sought from these lands depend upon long-term ecological sustainability. Considering increased human uses, it is essential that uses of today do not impair the functioning of ecological processes and the ability of these natural resources to contribute to sustainability in the future.

(1) Planning provides the guidance for maintaining or restoring the diversity of plant and animal communities and the productive capacity of ecological systems, the core elements of ecological sustainability.

(2) Planning is based on science and other knowledge, including the use of scientifically based strategies for sustainability and benefits from independent scientific peer review.

(3) Planning is based on the temporal and spatial scales necessary for sustainability.

(4) Planning includes the monitoring and evaluation of the achievement of goals.

(b) Planning contributes to social and economic sustainability by providing for a wide variety of uses, values, products, and services without compromising the basic composition, structure, and function of ecological systems.

(1) Planning recognizes and fosters a broad-based understanding of the interdependence of national forests and grasslands with economies and communities.

(2) Planning fosters strategies and actions that provide for human use in ways that contribute to long-term sustainability.

(c) Planning is efficiently integrated into the broader geographic, legal, and social landscape within which national forests and grasslands exist. Other agencies, governments, corporations, and citizens manage land in and around the national forests and grasslands. Planning, therefore, is outward looking with the goal of understanding the broader landscape in which the national forests and grasslands lie.

(1) Planning fosters coordination among all affected federal agencies.

(2) Planning proceeds in close cooperation with state, tribal, and local governments.

(3) Planning recognizes the rights of American Indian tribes and Alaska Natives.

(4) Planning is interdisciplinary, providing analyses and options that are responsive to a broad range of ecological, social, and economic.

(5) Planning acknowledges the limits and variability of likely budgets.

(d) Planning meaningfully engages the American people in the stewardship of their national forests and grasslands. Just as the Forest Service can help the American people learn about the limits and capabilities of the national forests and grasslands, managers also should be guided by the knowledge and values of the American people.

(1) Planning encourages extensive collaborative citizen participation and builds upon the human resources in local communities and throughout the nation.

(2) Planning actively seeks and addresses key issues and promotes a shared vision of desired conditions.

(3) Planning and plans are understandable.

(4) Planning restores and maintains the trust of the American people in the management of the national forests and grasslands.

(e) Planning is an ongoing process, where decisions are adapted, as necessary, to address new issues, new information, and unforeseen events.

(1) Planning is innovative and practical.

(2) Planning is expeditious and efficient in achieving goals.

(f) Planning seeks to manage National Forest System resources in a combination that best serves the public interest without impairment of the productivity of the land consistent with the Multiple-Use Sustained-Yield Act of 1960.

The Framework for Planning

§ 219.3 Overview.

(a) *The planning framework.* Land and resource management planning is a flexible process for fitting solutions to the scope and scale of needed action. Planning, conducted according to the planning framework outlined in §§ 219.3–219.11, involves engaging the public (§§ 219.12–219.18) and applying the best available science (§§ 219.22–219.25) to contribute to sustainability (§§ 219.19–219.21) in the use and enjoyment of National Forest System lands.

(b) *Levels of planning.* Planning may be undertaken at the national, regional, national forest or grassland, and/or ranger district administrative levels depending on the scope and scale of issues.

(1) The Chief of the Forest Service is responsible for national planning. National planning includes the Forest Service national strategic plan required under the Government Performance and Results Act of 1993 (5 U.S.C. 306, 31 U.S.C. 1115–1119 and 9703–9704) that establishes national long-term goals, outcome measures, and strategies to be considered in managing the National Forest System and the Resources Planning Act Program (16 U.S.C. 1600).

(2) The Forest or Grassland Supervisor is the responsible official for a plan amendment or revision, except to the extent the Regional Forester or Chief decides to act as the responsible official.

(3) When appropriate, two or more Forest or Grassland Supervisors, one or more Regional Foresters, or the Chief of the Forest Service may undertake planning which may amend or revise one or more plans.

(4) The Chief of the Forest Service, Regional Foresters, National Forest and Grassland Supervisors, or District Rangers may authorize and implement site-specific actions.

(c) *An interdisciplinary, collaborative approach to planning.* An interdisciplinary, collaborative approach to planning may be achieved by engaging the skills and interests of appropriate combinations of Forest Service staff, consultants, contractors, other federal agencies, states, American Indian tribes, Alaska Natives, or local government personnel, or other interested or affected people consistent with applicable laws.

(d) *Key elements.* The planning cycle begins with the identification and consideration of issues and concludes with the monitoring and evaluation of results. Based upon the scope and scale of issues, planning includes one or more of the following key elements:

(1) Identification and consideration of issues (§ 219.4);

(2) Information development and interpretation (§ 219.5);

(3) Proposed actions (§ 219.6);

(4) Plan decisions (§ 219.7);

(5) Amendment (§ 219.8);

(6) Revision (§ 219.9);

(7) Site-specific decisions (§ 219.10); and

(8) Monitoring and evaluation for adaptive management (§ 219.11).

§ 219.4 Identification and consideration of issues.

(a) *Origination of issues.* Issues may originate from a variety of sources including, but are not limited to:

inventories, assessments, analyses, monitoring and evaluation of projects; discussions among people and proposals by organizations or governments interested in or affected by National Forest System management; Presidential, Departmental, and Forest Service conservation leadership initiatives; cooperatively developed landscape goals (§ 219.12(b)); evaluation of sustainability (§ 219.9(b)(4)); enactment of new laws; policies such as the Forest Service national strategic plan; and applications for authorization for occupancy and use of National Forest System lands.

(b) *Consideration of issues.* The responsible official has the discretion to determine, at any time, whether and to what extent an issue is appropriate for consideration.

(1) In making this determination, the responsible official should consider:

(i) The scope, complexity, and geographic scale of potential actions that may address an issue;

(ii) Statutory requirements;

(iii) Organizational and community capabilities and available resources, including current and likely Forest Service budgets;

(iv) The scientific basis and merit of available data and analyses;

(v) The relationship of possible actions to the Forest Service national strategic plan, other existing plans, adopted conservation strategies, biological opinions, or other strategies applicable within all or a portion of the plan area; and

(vi) The opinions of interested or affected individuals, organizations, or other entities and the social and cultural values related to an issue.

(2) The responsible official should consider the extent to which addressing the issue relates to or provides:

(i) Opportunities to contribute to the achievement of cooperatively developed landscape goals;

(ii) Opportunities for the national forests and grasslands to contribute to the restoration or maintenance of ecological sustainability, including maintenance or restoration of watershed function, such as water flow regimes to benefit aquatic resources, groundwater recharge, municipal water supply, or other uses, and maintaining or restoring ecological conditions needed for ecosystem and species diversity;

(iii) Opportunities for the national forests or grasslands to contribute to social and economic sustainability;

(iv) Opportunities to recover threatened or endangered species and maintain or restore their habitat;

(v) The potential for negative environmental effects, including human health, economic and social effects, upon minority and low income communities;

(vi) Opportunities to maintain or restore ecological conditions that are similar to the biological and physical range of expected variability (§ 219.20(b)(1)); and

(vii) Opportunities to contribute to knowledge about and preservation of historic and cultural resources.

§ 219.5 Information development and interpretation.

If the responsible official determines an issue should receive consideration, the responsible official should review relevant information such as inventories, broad-scale assessments, local analyses, or monitoring results to determine if additional information is desirable and if it can be obtained at a reasonable cost and in a timely manner. The responsible official, at his or her discretion, may choose the methods and determine the scope of information development and interpretation for an issue under consideration. A broad-scale assessment or a local analysis may be developed or supplemented if appropriate to the scope and scale of an issue. Broad-scale assessments, local analyses, monitoring results, and other studies are not site-specific or plan decisions or proposals for agency action (§ 219.6(a)) subject to Forest Service NEPA procedures.

(a) *Broad-scale assessments.* Broad-scale assessments provide information regarding ecological, economic, or social issues that are broad in geographic scale, sometimes crossing Forest Service regional administrative boundaries. Ecological information and analyses that may be provided in an assessment are addressed in § 219.20(a). Social and economic information and analyses that may be provided in an assessment are addressed in § 219.21(a).

(1) Broad-scale assessment should provide the following as appropriate:

(i) Findings and conclusions that describe historic conditions, current status, and future trends of ecological, social, and/or economic conditions, their relationship to sustainability, and the principal factors contributing to those conditions and trends. The responsible official may use these findings and conclusions to identify other issues (§ 219.4), develop proposals for action (§ 219.6), or for other purposes.

(ii) Identification of needs for additional research to develop new information or address conflicting interpretations of existing information.

(2) Station Directors and Regional Foresters must have joint responsibility for Forest Service participation in broad-scale assessments. Each broad-scale assessment should be designed and conducted with the assistance of scientists, resource professionals, governmental entities, and other individuals and organizations knowledgeable of the assessment area.

(b) *Local analyses.* Local analyses provide ecological, social, or economic information as deemed appropriate by the responsible official. Local analyses may cover watersheds, ecological units, and social and economic units, and may tier to or provide information to update a broad-scale assessment. Local analyses should provide the following, as appropriate:

(1) Characterization of the area of analysis;

(2) Description of issues within the analysis area;

(3) Description of current conditions;

(4) Description of likely future conditions;

(5) Synthesis and interpretation of information; and

(6) Recommendations for proposals (§ 219.6(a)) or identification of other issues (§ 219.4).

§ 219.6 Proposed actions.

(a) *Proposal.* The responsible official may propose to amend or revise a plan, propose a site-specific action, or both.

(b) *NEPA requirements.* Unless otherwise provided by law, the responsible official must analyze the effects of the proposal and alternative(s) in conformance with Forest Service NEPA procedures. The responsible official may use issues identified and information reviewed pursuant to §§ 219.4–219.5 for scoping required in Forest Service NEPA procedures.

§ 219.7 Plan decisions.

Plan decisions guide or limit uses of National Forest System resources and provide the basis for future agency action. Plan decisions link the requirements of laws, regulations, Executive Orders, policies, and the Forest Service national strategic plan to specific national forests and grasslands. While plan decisions generally do not commit resources to a site-specific action, plan decisions provide a framework for authorizing site-specific actions that may commit resources. In making decisions, the responsible official should seek to manage National Forest System resources in a combination that best serves the public interest without impairment of the productivity of the land consistent with the Multiple-Use Sustained-Yield Act of 1960. Plan decisions may apply to all or part of a plan area. Paragraphs (a)

through (e) of this section describe the decisions in a plan.

(a) *Desired resource conditions.* These plan decisions define the resource conditions sought within all or portions of the plan area. Desired resource conditions may include, but are not limited to, the desired watershed and ecological conditions and aquatic and terrestrial habitat characteristics.

(b) *Objectives.* These plan decisions are concise statements describing measurable results intended to contribute to sustainability (§ 219.19), including a desired level of uses, values, products, and services, assuming current or likely budgets and considering other spending levels as appropriate. Objectives include an estimate of the time and resources needed for their completion.

(c) *Standards.* These plan decisions are the requirements and limitations for land uses and management actions necessary for the achievement of desired conditions and objectives and compliance with applicable laws, regulations, Executive Orders, and policies. Standards include, but are not limited to:

(1) Limitations on even-aged timber harvest methods;

(2) Maximum size openings from timber harvest;

(3) Methods for achieving aesthetic objectives by blending the boundaries of vegetation treatments; and

(4) Other requirements to achieve multiple-use of the national forests and grasslands.

(d) *Designation of suitable land uses.* These plan decisions identify lands within the National Forest System that are or are not suitable for specific uses (§ 219.26), including, but not limited to: the transportation system; livestock grazing; special designations as described in § 219.27; and lands where timber production is an objective (§ 219.28).

(e) *Monitoring strategy.* A monitoring strategy is required by each plan as described in § 219.11(a).

§ 219.8 Amendment.

(a) *Amending plans.* A plan amendment may add, modify, or rescind one or more of the decisions of a plan (§ 219.7). An amendment decision must be based on the identification and consideration of issues (§ 219.4), applicable information (§ 219.5), and an analysis of the effects of the proposed amendment (§ 219.6). In developing an amendment, the responsible official must provide opportunities for collaboration consistent with § 219.12 through § 219.18.

(b) *Environmental review of a proposed plan amendment.* For each proposal for a plan amendment, the responsible official must complete appropriate environmental analyses and public involvement in accordance with Forest Service NEPA procedures. A proposed amendment that may create a significant environmental effect and thus require preparation of an environmental impact statement is considered to be a significant change in the plan. If a proposal for amendment requires the preparation of an environmental impact statement, the responsible official must give public notice and an opportunity to comment on the draft environmental impact statement for at least 90 calendar days.

§ 219.9 Revision.

(a) *Application of the revision process.* Revision of a plan is required by 16 U.S.C. 1604(f)(5). The revision process is a review of the overall management of a unit of the National Forest System and an opportunity to consider the likely results if plan decisions were to remain in effect.

(b) *Initiating revision.* To begin the revision process, the responsible official must:

(1) Provide opportunities for collaboration consistent with § 219.12 through § 219.18;

(2) Summarize those issues the responsible official determines to be appropriate for consideration (§ 219.4), any relevant inventories, new data, findings and conclusions from appropriate broad-scale assessments and local analyses, monitoring and evaluation results, new or revised Forest Service policies, relevant portions of the Forest Service national strategic plan, and changes in circumstances affecting the entire or significant portions of the plan area;

(3) Develop the information and complete the analyses described in § 219.20(a) and § 219.21(a);

(4) Evaluate the effectiveness of the current plan in contributing to sustainability (§§ 219.19–219.21) based on the information, analyses, and requirements described in § 219.20(a) and (b) and § 219.21(a) and (b), and provide for an independent scientific peer review (§ 219.22) of the evaluation;

(5) Identify new proposals for special areas, special designation, or for recommendation as wilderness (§ 219.27);

(6) Identify specific watersheds in need of protective or restoration measures;

(7) Identify lands classified as not suitable for timber production (§ 219.28);

(8) Identify and evaluate inventoried roadless areas and unroaded areas based on the information, analyses, and requirements in § 219.20(a) and § 219.21(a). During the plan revision process or at other times as deemed appropriate, the responsible official must determine which inventoried roadless areas and unroaded areas warrant additional protection and the level of protection to be afforded; and

(9) Develop an estimate of outcomes that would be anticipated, including uses, values, products, or services, for a 15-year period following initiation of the revision process, if the plan decisions in effect at the time the revision process began remain in effect.

(c) *Public notice of revision process and review of information.* After the responsible official has compiled the information required under paragraph (b) of this section, the responsible official must give public notice of the plan revision process and make the information compiled under paragraph (b) of this section available for public comment for at least 45 calendar days.

(d) *Notice of Intent.* Based upon the information compiled under paragraph (b) of this section and any comments received during the comment period required under paragraph (c) of this section, the responsible official must publish a Notice of Intent to prepare an environmental impact statement to add, modify, remove, or continue in effect the decisions embodied in a plan. The responsible official must give the public notice and an opportunity to comment on the draft environmental impact statement for at least 90 calendar days. Following public comment, the responsible official must oversee preparation of a final environmental impact statement in accordance with Forest Service NEPA procedures.

(e) *Final decision on plan revision.* The revision process is completed when the responsible official signs a record of decision for a plan revision.

§ 219.10 Site-specific decisions.

To the extent appropriate and practicable and subject to valid existing rights and appropriate statutes, the responsible official must provide opportunities for collaboration consistent with § 219.12 through § 219.18, follow the planning framework described in §§ 219.4–219.6 and comply with § 219.11 to make site-specific decisions. All site-specific decisions, including authorized uses of land, must be consistent with the applicable plan. If a proposed site-specific decision is not consistent with the applicable plan, the responsible official may modify the proposed decision to make it consistent

with the plan, reject the proposal; or amend the plan to authorize the action.

§ 219.11 Monitoring and evaluation for adaptive management.

(a) *Plan monitoring strategy.* Each plan must contain a practicable, effective, and efficient monitoring strategy to evaluate sustainability in the plan area (§§ 219.19–219.21). The strategy must require monitoring of appropriate plan decisions and characteristics of sustainability.

(1) *Monitoring and evaluation of ecological sustainability.* The plan monitoring strategy for the monitoring and evaluation of ecological sustainability must require monitoring of:

(i) *Ecosystem diversity.* Monitoring must be used to evaluate the status and trend of selected physical and biological characteristics of ecosystem diversity (§ 219.20(a)(1)). The plan monitoring strategy must document the reasons for selection of characteristics to be monitored, monitoring objectives, methodology, and designate critical values that will prompt reviews of plan decisions.

(ii) *Species diversity.* Monitoring must be used to evaluate focal species and species-at-risk as follows:

(A) The status and trends of ecological conditions known or suspected to support focal species and selected species-at-risk must be monitored. The plan monitoring strategy must document the reasons for the selection of species-at-risk for which ecological conditions are to be monitored, including the degree of risk to the species, the factors that put the species at risk, and the strength of association between ecological conditions and population dynamics.

(B) In addition to monitoring of ecological conditions, the plan monitoring strategy may require population monitoring for some focal species and some species-at-risk. This monitoring may be accomplished by a variety of methods including population occurrence and presence/absence data, sampling population characteristics, using population indices to track relative population trends, or inferring population status from ecological conditions.

(C) A decision by the responsible official to monitor populations and the responsible official's choice of methodologies for monitoring selected focal species and selected species-at-risk may be based upon factors that include, but are not limited to, the degree of risk to the species, the degree to which a species' life history characteristics lend themselves to monitoring, the reasons that a species is included in the list of focal species or species-at-risk, and the strength of association between ecological conditions and population dynamics. Monitoring of population trend is often appropriate in those cases where risk to species viability is high and population characteristics cannot be reliably inferred from ecological conditions. The reasons for selection of species, monitoring objectives, and methodologies must be documented as part of the plan monitoring strategy. Critical values that will prompt reviews of plan decisions must be designated in the monitoring strategy.

(iii) *Monitoring effectiveness.* As a part of the plan monitoring strategy, the responsible official must evaluate the effectiveness of selected characteristics of ecosystem diversity and species diversity in providing reliable information regarding ecological sustainability.

(2) *Monitoring and evaluation of social and economic sustainability.* The plan monitoring strategy for the monitoring and evaluation of social and economic sustainability should provide for periodic review of national, regional, and local supply and demand for products, services, and values. Special consideration should be given to those uses, values, products, and services that the National Forest System is uniquely poised to provide. Monitoring should improve the understanding of the National Forest System contributions to social and economic sustainability. The plan monitoring strategy must require the responsible official to evaluate the effectiveness of information and analyses described in § 219.21(a) in providing reliable information regarding social and economic sustainability.

(b) *Monitoring of site-specific actions.* The decision document authorizing a site-specific action should describe any required monitoring and evaluation for the site-specific action. The responsible official must determine that there is a reasonable expectation that anticipated funding is adequate to complete any required monitoring and evaluation prior to authorizing a site-specific action.

(c) *Monitoring methods.* Unless required by the monitoring strategy, monitoring methods may be changed to reflect new information without plan amendment or revision.

(d) *Use of monitoring information.* Where monitoring and evaluation is required by the plan monitoring strategy, the responsible official must ensure that monitoring information is used to determine one or more of the following:

(1) If site-specific actions are completed as specified in applicable decision documents;

(2) If the aggregated outcomes and effects of completed and ongoing actions are achieving or contributing to the desired conditions;

(3) If key assumptions identified for monitoring in plan decisions remain valid; and

(4) If plan or site-specific decisions need to be modified.

(e) *Coordination of monitoring activities.* To the extent practicable, monitoring and evaluation should be conducted jointly with other federal agencies, state, local, and tribal governments, scientific and academic communities, and others. In addition, the responsible official must provide appropriate opportunities for the public to be involved and utilize scientists as described in § 219.23.

(f) *Annual monitoring and evaluation report.* The responsible official must prepare a monitoring and evaluation report for the plan area within 6 months following the end of each fiscal year. The report must be maintained with the plan documents (§ 219.30(d)(5)), and include the following:

(1) A list or reference to monitoring required by the plan; and

(2) A summary of the results of monitoring and evaluation performed during the preceding fiscal year and appropriate results from previous years. The summary must include:

(i) A description of the progress toward achievement of desired conditions within the plan area; and

(ii) A description of the plan area's contribution to the achievement of applicable outcomes of the Forest Service national strategic plan.

Collaborative Planning for Sustainability

§ 219.12 Collaboration and cooperatively developed landscape goals.

(a) *Collaboration.* To promote sustainability, the responsible official must actively engage the American public, interested organizations, private landowners, state, local, and Tribal governments, federal agencies, and others in the stewardship of National Forest System lands. To engage people in the stewardship of National Forest System lands, the responsible official may assume many roles, such as leader, organizer, facilitator, or participant. The responsible official must provide early and frequent opportunities for people to participate openly and meaningfully in planning taking into account the diverse roles, jurisdictions, and responsibilities of interested and affected organizations,

groups, and individuals. The responsible official has the discretion to determine how to provide these opportunities in the planning process.

(b) *Cooperatively developed landscape goals.* (1) The responsible official and other Forest Service employees involved in planning must invite and encourage others to engage in the collaborative development of landscape goals. Using information from broad-scale assessments or other available information, and subject to applicable laws, the responsible official may initiate or join ongoing collaborative efforts to develop or propose landscape goals for areas that include National Forest System lands.

(2) During collaborative efforts, responsible officials and other Forest Service employees, must communicate and foster understanding of the nation's declaration of environmental policy as set forth in section 101(b) of the National Environmental Policy Act, as amended (42 U.S.C. 4321–4347), which states that it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate federal plans, functions, programs, and resources to the end that the Nation may—

(i) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(ii) Assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(iii) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(iv) Preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;

(v) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(vi) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(3) Cooperatively developed landscape goals, whether the result of efforts initiated by the Forest Service or others, must be deemed an issue for the purposes under § 219.4.

§ 219.13 Coordination among federal agencies.

The responsible official must provide early and frequent coordination with appropriate federal agencies and may provide opportunities:

(a) For interested or affected federal agencies to participate in the identification of issues and formulation of proposed actions;

(b) For the streamlined coordination of federal agency policies, resource management plans, or programs; and

(c) The development, where appropriate and practicable, of joint resource management plans.

§ 219.14 Involvement of state and local governments.

The responsible official must provide early and frequent opportunities for state and local governments to:

(a) Participate in the planning process, including the identification of issues; and

(b) Contribute to the streamlined coordination of resource management plans or programs.

§ 219.15 Interaction with American Indian tribes and Alaska Natives.

(a) The Forest Service shares in the federal government's overall trust responsibility for federally recognized American Indian tribes and Alaska Natives.

(b) During planning, the responsible official must consider the government-to-government relationship between American Indian or Alaska Native tribal governments and the federal government.

(c) The responsible official must consult with and invite American Indian tribes and Alaska Natives to participate in the planning process to assist in:

(1) The early identification of treaty rights, treaty-protected resources, and American Indian tribe trust resources;

(2) The consideration of tribal data and resource knowledge provided by tribal representatives; and

(3) The consideration of tribal concerns and suggestions during decisionmaking.

§ 219.16 Relationships with interested individuals and organizations.

The responsible official must:

(a) Make planning information available to the extent allowed by law;

(b) Conduct planning processes that are fair, meaningful, and open to persons with diverse opinions;

(c) Provide early and frequent opportunities for participation in the identification of issues;

(d) Encourage interested individuals and organizations to work collaboratively with one another to improve understanding and develop cooperative landscape and other goals;

(e) Consult with individuals and organizations who can provide information about current and historic public uses within an assessment or plan area, about the location of unique and sensitive resources and values and cultural practices related to issues in the plan area; and

(f) Consult with scientific experts and other knowledgeable persons, as appropriate, during consideration of collaboratively developed landscape goals and other activities.

§ 219.17 Interaction with private landowners.

The responsible official must seek to collaborate with those who have control or authority over lands adjacent to or within the external boundaries of national forests or grasslands to identify:

(a) Local knowledge;

(b) Potential actions and partnership activities;

(c) Potential conditions and activities on the adjacent lands that may affect management of National Forest System lands, or vice versa; and

(d) Issues (§ 219.4).

§ 219.18 Role of advisory committees.

(a) *Advisory committees.* Advisory committees can provide an immediate, representative, and predictable structure within which public dialogue can occur and the Forest Service can develop relationships with diverse communities of interests. The responsible official may seek the assistance or advice from a committee, consistent with the requirements of the Federal Advisory Committee Act (5 U.S.C. app.) in determining whether there is a reasonable basis to propose an action to address an issue. Each Forest or Grassland Supervisor must have access to an advisory committee with knowledge of local conditions and issues, although an advisory committee is not required for each national forest or grassland. Responsible officials may request establishment of advisory committees and recommend members to the Secretary of Agriculture. Advisory committees used by other agencies may be utilized through proper agreements.

(b) *Participation in other types of community-based groups.* When appropriate, the responsible official should consider participating in community-based groups organized for a variety of public purposes, particularly those groups organized to develop landscape goals (§ 219.12(b)).

Ecological, Social, and Economic Sustainability

§ 219.19 Ecological, social, and economic sustainability.

Sustainability, composed of interdependent ecological, social, and

economic elements, embodies the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528 *et seq.*) without impairment to the productivity of the land and is the overall goal of management of the National Forest System. The first priority for stewardship of the national forests and grasslands is to maintain or restore ecological sustainability to provide a sustainable flow of uses, values, products, and services from these lands.

§ 219.20 Ecological sustainability.

To achieve ecological sustainability, the responsible official must ensure that plans provide for maintenance or restoration of ecosystems at appropriate spatial and temporal scales determined by the responsible official.

(a) *Ecological information and analyses.* Ecosystem diversity and species diversity are components of ecological sustainability. The planning process must include the development and analysis of information regarding these components at a variety of spatial and temporal scales. These scales include geographic areas such as bioregions and watersheds, scales of biological organization such as communities and species, and scales of time ranging from months to centuries. Information and analyses regarding the components of ecological sustainability may be identified, obtained, or developed through a variety of methods, including broad-scale assessments and local analyses (§ 219.5), and monitoring results (§ 219.11). For plan revisions, and to the extent the responsible official considers appropriate for plan amendments or site-specific decisions, the responsible official must develop or supplement the following information and analyses related to ecosystem and species diversity:

(1) *Characteristics of ecosystem and species diversity.* Characteristics of ecosystem and species diversity must be identified for assessing and monitoring ecological sustainability. In general, these identified characteristics should be consistent at various scales of analyses.

(i) *Ecosystem diversity.* Characteristics of ecosystem diversity include, but are not limited to:

(A) *Major vegetation types.* The composition, distribution, and abundance of the major vegetation types and successional stages of forest and grassland systems; the prevalence of invasive or noxious plant or animal species.

(B) *Water resources.* The diversity, abundance, and distribution of aquatic and riparian systems including streams, stream banks, coastal waters, estuaries, groundwater, lakes, wetlands, shorelines, riparian areas, and floodplains; stream channel morphology and condition, and flow regimes.

(C) *Soil resources.* Soil productivity; physical, chemical and biological properties; soil loss; and compaction.

(D) *Air resources.* Air quality, visibility, and other air resource values.

(E) *Focal species.* Focal species that provide insights to the larger ecological systems with which they are associated.

(ii) *Species diversity.* Characteristics of species diversity include, but are not limited to, the number, distribution, and geographic ranges of plant and animal species, including focal species and species-at-risk that serve as surrogate measures of species diversity. Species-at-risk and focal species must be identified for the plan area.

(2) *Evaluation of ecological sustainability.* Evaluations of ecological sustainability must be conducted at the scope and scale determined by the responsible official to be appropriate to the planning decision. These evaluations must describe the current status of ecosystem diversity and species diversity, risks to ecological sustainability, cumulative effects of human and natural disturbances, and the contribution of National Forest System lands to the ecological sustainability of all lands within the area of analysis.

(i) *Evaluation of ecosystem diversity.* Evaluations of ecosystem diversity must include, as appropriate, the following:

(A) Information about focal species that provide insights to the integrity of the larger ecological system to which they belong.

(B) A description of the biological and physical properties of the ecosystem using the characteristics identified in paragraph (a)(1)(i) of this section.

(C) A description of the principal ecological processes occurring at the spatial and temporal scales that influence the characteristic structure and composition of ecosystems in the assessment or analysis area. These descriptions must include the distribution, intensity, frequency, and magnitude of natural disturbance regimes of the current climatic period, and should include other ecological processes important to ecological sustainability, such as nutrient cycling, migration, dispersal, food web dynamics, water flows, and the identification of the risks to maintaining these processes. These descriptions may also include an evaluation of the feasibility of maintaining natural ecological processes as a tool to contribute to ecological sustainability.

(D) A description of the effects of human activities on ecosystem diversity. These descriptions must distinguish activities that had an integral role in the landscape's ecosystem diversity for a long period of time from activities that are of a type, size, or rate that were not typical of disturbances under which native plant and animal species and ecosystems developed.

(E) An estimation of the range of variability of the characteristics of ecosystem diversity, identified in paragraph (a)(l)(i) of this section, that would be expected under the natural disturbance regimes of the current climatic period. The current values of these characteristics should be compared to the expected range of variability to develop insights about the current status of ecosystem diversity.

(F) An evaluation of the effects of air quality on ecological systems including water.

(G) An estimation of current and foreseeable future Forest Service consumptive and non-consumptive water uses and the quantity and quality of water needed to support those uses and contribute to ecological sustainability.

(H) An identification of reference landscapes to provide for evaluation of the effects of actions.

(ii) *Evaluations of species diversity.* Evaluations of species diversity must include, as appropriate, assessments of the risks to species viability and the identification of ecological conditions needed to maintain species viability over time based on the following:

(A) The viability of each species listed under the Endangered Species Act as threatened, endangered, candidate, and proposed species must be assessed. Individual species assessments must be used for these species.

(B) For all other species, including other species-at-risk and those species for which there is little information, a variety of approaches may be used, including individual species assessments and assessments of focal species or other indicators used as surrogates in the evaluation of ecological conditions needed to maintain species viability.

(C) Except as provided in paragraph (a)(2)(ii)(A) of this section, for species groups that contain many species, assessments of functional, taxonomic, or habitat groups rather than individual species may be appropriate.

(D) In analyzing viability, the extent of information available about species, their habitats, the dynamic nature of ecosystems and the ecological conditions needed to support them must

be identified. Species assessments may rely on general conservation principles and expert opinion. When detailed information on species habitat relationships, demographics, genetics, and risk factors is available, that information should be considered.

(b) *Plan decisions.* When making plan decisions that will affect ecological sustainability, the responsible official must use the information developed under paragraph (a) of this section. The following requirements must apply at the spatial and temporal scales that the responsible official determines to be appropriate to the plan decision:

(1) *Ecosystem diversity.* Plan decisions affecting ecosystem diversity must provide for maintenance or restoration of the characteristics of ecosystem composition and structure within the range of variability that would be expected to occur under natural disturbance regimes of the current climatic period in accordance with paragraphs (b)(1)(i) through (v) of this section.

(i) Except as provided in paragraph (b)(1)(iv) of this section, in situations where ecosystem composition and structure are currently within the expected range of variability, plan decisions must maintain the composition and structure within the range.

(ii) Except as provided in paragraph (b)(1)(v) of this section, where current ecosystem composition and structure are outside the expected range of variability, plan decisions must provide for measurable progress toward ecological conditions within the expected range of variability.

(iii) Where the range of variability cannot be practicably defined, plan decisions must provide for measurable progress toward maintaining or restoring ecosystem diversity. The responsible official must use independently peer-reviewed scientific methods other than the expected range of variability to maintain or restore ecosystem diversity. The scientific basis for such alternative methods must be documented in accordance with (§§ 219.22–219.25).

(iv) Where the responsible official determines that ecological conditions are within the expected range of variability and that maintaining ecosystem composition and structure within that range is ecologically, socially or economically unacceptable, plan decisions may provide for ecosystem composition and structure outside the expected range of variability. In such circumstances, the responsible official must use independently peer-reviewed scientific methods other than the expected range of variability to provide for the maintenance or restoration of ecosystem diversity. The scientific basis for such alternative methods must be documented in accordance with (§§ 219.22–219.25).

(v) Where the responsible official determines that ecological conditions are outside the expected range of variability and that it is not practicable to make measurable progress toward conditions within the expected range of variability, or that restoration would result in conditions that are ecologically, socially or economically unacceptable, plan decisions may provide for ecosystem composition and structure outside the expected range of variability. In such circumstances, the responsible official must use independently peer-reviewed scientific methods other than the expected range of variability to provide for the maintenance or restoration of ecosystem diversity. The scientific basis for such alternative methods must be documented (§§ 219.22–219.25).

(2) *Species diversity.* (i) Plan decisions affecting species diversity must provide for ecological conditions that the responsible official determines provide a high likelihood that those conditions are capable of supporting over time the viability of native and desired non-native species well distributed throughout their ranges within the plan area, except as provided in paragraphs (b)(2)(ii)–(iv) of this section. Methods described in paragraph (a)(2)(ii) of this section may be used to make the determinations of ecological conditions needed to maintain viability. A species is well distributed when individuals can interact with each other in the portion of the species range that occurs within the plan area. When a plan area occupies the entire range of a species, these decisions must provide for ecological conditions capable of supporting viability of the species and its component populations throughout that range. When a plan area encompasses one or more naturally disjunct and self-sustaining populations of a species, these decisions must provide ecological conditions capable of supporting over time viability of each population. When a plan area encompasses only a part of a population, these decisions must provide ecological conditions capable of supporting viability of that population well distributed throughout its range within the plan area.

(ii) When conditions outside the authority of the agency prevent the agency from providing ecological conditions that provide a high likelihood of supporting over time the viability of native and desired non-native species well distributed throughout their ranges within the plan area, plan decisions must provide for ecological conditions well distributed throughout the species range within the plan area to contribute to viability of that species.

(iii) Where species are inherently rare or not naturally well distributed in the plan area, plan decisions should not contribute to the extirpation of the species from the plan area and must provide for ecological conditions to maintain these species considering their natural distribution and abundance.

(iv) Where environmental conditions needed to support a species have been so degraded that it is technically infeasible to restore ecological conditions that would provide a high likelihood of supporting viability, plan decisions must provide for ecological conditions to contribute to supporting over time viability to the degree practicable.

(3) *Federally listed threatened and endangered species.* (i) Plan decisions must provide for implementing actions in conservation agreements with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service that provide a basis for not needing to list a species. In some situations, conditions or events beyond the control or authority of the agency may limit the Forest Service's ability to prevent the need for federal listing. Plan decisions should reflect the unique opportunities that National Forest System lands provide to contribute to recovery of listed species.

(ii) Plan decisions involving species listed under the Endangered Species Act must include, at the scale determined by the responsible official to be appropriate to the plan decision, reasonable and prudent measures and associated terms and conditions contained in final biological opinions issued under 50 CFR part 402. The plan decision documents must provide a rationale for adoption or rejection of discretionary conservation recommendations contained in final biological opinions.

§ 219.21 Social and economic sustainability.

To contribute to economic and social sustainability, the responsible official involves interested and affected people in planning for National Forest System lands (§§ 219.12–219.18), provides for the development and consideration of relevant social and economic information and analyses, and a range of uses, values, products, and services.

(a) *Social and economic information and analyses.* To understand the contribution national forests and grasslands make to the economic and social sustainability of local communities, regions, and the nation, the planning process must include the analysis of economic and social information at variable scales, including national, regional, and local scales. Social analyses address human life-styles, cultures, attitudes, beliefs, values, demographics, and land-use patterns, and the capacity of human communities to adapt to changing conditions. Economic analyses address economic trends, the effect of national forest and grassland management on the well-being of communities and regions, and the net benefit of uses, values, products, or services provided by national forests and grasslands. Social and economic analyses should recognize that the uses, values, products, and services from national forests and grasslands change with time and the capacity of communities to accommodate shifts in land uses change. Social and economic analyses may rely on quantitative, qualitative, and participatory methods for gathering and analyzing data. Social and economic information may be developed and analyzed through broad-scale assessments and local analyses (§ 219.5), monitoring results (§ 219.11), or other means. For plan revisions, and to the extent the responsible official considers to be appropriate for plan amendments or site-specific decisions, the responsible official must develop or supplement the information and analyses related to the following:

(1) Describe and analyze, as appropriate, the following:

(i) Demographic trends; life-style preferences; public values; land-use patterns; related conservation and land use policies at the state and local level; cultural and American Indian tribe and Alaska Native land settlement patterns; social and cultural history; social and cultural opportunities provided by national forest system lands; the organization and leadership of local communities; community assistance needs; community health; and other appropriate social and cultural information;

(ii) Employment, income, and other economic trends; the range and estimated long-term value of market and non-market goods, uses, services, and amenities that can be provided by national forest system lands consistent with the requirements of ecological sustainability, the estimated cost of providing them, and the estimated effect of providing them on regional and community well-being, employment, and wages; and other appropriate economic information. Special attention should be paid to the uses, values, products, or services that the Forest Service is uniquely poised to provide;

(iii) Opportunities to provide social and economic benefits to communities through natural resource restoration strategies;

(iv) Other social or economic information, if appropriate, to address issues being considered by the responsible official (§ 219.4).

(2) Analyze community or region risk and vulnerability. Risk and vulnerability analyses assess the vulnerability of communities from changes in ecological systems as a result of natural succession or potential management actions. Risk may be considered for geographic, relevant occupational, or other related communities of interest. Resiliency and community capacity should be considered in a risk and vulnerability analysis. Risk and vulnerability analysis may also address potential consequences to communities and regions from land management changes in terms of capital availability, employment opportunities, wage levels, local tax bases, federal revenue sharing, the ability to support public infrastructure and social services, human health and safety, and other factors as necessary and appropriate.

(b) *Plan decisions.* When making plan decisions that will affect social or economic sustainability, the responsible official must use the information analyses developed in paragraph (a) of this section. Plan decisions contribute to social and economic sustainability by providing for a range of uses, values, products, and services, consistent with ecological sustainability.

The Contribution of Science

§ 219.22 The overall role of science in planning.

(a) The responsible official must ensure that the best available science is considered in planning. The responsible official, when appropriate, should acknowledge incomplete or unavailable information, scientific uncertainty, and the variability inherent in complex systems.

(b) When appropriate and practicable and consistent with applicable law, the responsible official should provide for independent, scientific peer reviews of the use of science in planning. Independent, scientific peer reviews are conducted using generally accepted scientific practices that do not allow individuals to participate in the peer reviews of documents they authored or co-authored.

§ 219.23 The role of science in assessments, analyses, and monitoring.

(a) *Broad-scale assessments.* If the Forest Service is leading a broad-scale assessment, the assessment must be led by a Chief Scientist selected by the Deputy Chief of Research and Development. When appropriate and practicable, a responsible official may provide for independent, scientific peer review of the findings and conclusions originating from a broad-scale assessment. Independent, scientific peer review may be provided by scientists from the Forest Service, other federal, state, or tribal agencies, or other institutions.

(b) *Local analyses.* Though not required, a responsible official may include scientists in the development or technical reviews of local analyses and field reviews of the design and selection of subsequent site-specific actions.

(c) *Monitoring.* (1) The responsible official must include scientists in the design and evaluation of monitoring strategies. Additionally, the responsible official must provide for an independent, scientific peer review of plan monitoring on at least a biennial basis to validate adherence to appropriate protocols and methods in collecting and processing of monitoring samples and to validate that data are summarized and interpreted properly.

(2) When appropriate and practicable, the responsible official should include scientists in the review of monitoring data and analytical results to determine trends relative to ecological, economic, or social sustainability.

§ 219.24 Science consistency evaluations.

(a) The responsible official must ensure that plan amendments and revisions are consistent with the best available science. The responsible official may use a science advisory board (§ 219.25) to assist in determining whether information gathered, evaluations conducted, or analyses and conclusions reached in the planning process are consistent with the best available science. If the responsible official decides to use a science advisory board, the board and the responsible official are to jointly establish criteria for the science advisory board and the responsible official to use in reviewing the consistency of proposed plan amendments and revisions with the best available science.

(b) The science advisory board is responsible for organizing and conducting a scientific consistency evaluation to determine the following:

(1) If relevant scientific (ecological, social, or economic) information has been considered by the responsible official in a manner consistent with current scientific understanding at the appropriate scales;

(2) If uncertainty of knowledge has been recognized, acknowledged, and adequately documented; and

(3) If the level of risk in achievement of sustainability is acknowledged and adequately documented by the responsible official.

(c) If substantial disagreement among members of the science advisory board or between the science advisory board and the responsible official is identified during a science consistency evaluation, a summary of such disagreement should be noted in the appropriate environmental documentation within Forest Service NEPA procedures.

§ 219.25 Science advisory boards.

(a) *National science advisory board.* The Forest Service Deputy Chief for Research and Development must establish, convene, and chair a science advisory board to provide scientific advice on issues identified by the Chief of the Forest Service. Board membership must represent a broad range of scientific disciplines including, but not limited to, the physical, biological, economic, and social sciences.

(b) *Regional science advisory boards.* Based upon needs identified by Regional Forester(s) or Research Station Director(s), the Forest Service Research Station Director(s), should establish and convene science advisory boards consistent with the Federal Advisory Committee Act (5 U.S.C. app.) to provide advice to one or more Regional Foresters regarding the application of science in planning and decisionmaking for National Forest System lands. At least one regional science advisory board must be available for each national forest and grassland. The Station Director(s) must chair the board or appoint a chair of such boards. The geographical boundaries of the boards need not align with National Forest System Regional boundaries. Board membership must represent a broad range of science disciplines including, but not limited to, the physical, biological, economic, and social sciences. Regional science advisory board tasks may include, but are not limited, to:

(1) Evaluating significance and relevance of new information related to current plan decisions, including the results of monitoring and evaluation; and

(2) Evaluating science consistency as described in § 219.24.

(c) *Work groups.* With the concurrence of the appropriate chair and subject to available funding, the national or regional science advisory boards may convene work groups to study issues and provide recommendations.

Special Considerations

§ 219.26 Identifying and designating suitable uses.

National forests and grasslands are suitable for a wide variety of public uses, such as outdoor recreation, livestock grazing, timber harvest, off-road vehicle travel, or other uses except where lands are determined to be unsuited for a particular use. Lands are not suited for a particular use if that use: is prohibited by law, regulation, or Executive Order; is incompatible with the mission or policies of the National Forest System; or would result in substantial and permanent impairment of the productivity of the land. Through a plan amendment or revision, the responsible official may determine whether specific uses may begin, continue, or terminate within the plan area. Planning documents should describe or display lands suitable for various uses in areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions.

§ 219.27 Special designations.

The Forest Service may recommend special designations to higher authorities or, to the extent permitted by law, adopt special designations through plan amendment or revision. Special designations are areas within the National Forest System that are identified for their unique or special characteristics and include the following:

(a) *Congressionally designated areas.* Congressionally designated areas may include, but are not limited to, wilderness, wild and scenic rivers, national trails, scenic areas, recreation areas, and monuments. These nationally significant areas must be managed as required by Congress and may have specific requirements for their management.

(b) *Wilderness area reviews.* Unless federal statute directs otherwise, all undeveloped areas that are of sufficient size as to make practicable their preservation and use in an unimpaired condition must be evaluated for recommended wilderness designation during the plan revision process. These areas may be evaluated at other times as determined by the responsible official.

(c) *Administratively designated areas.* Administratively designated areas may include, but are not limited to, critical watersheds, research natural areas, national monuments, geological areas, inventoried roadless areas, unroaded areas, motorized and non-motorized recreation areas, botanical areas, and scenic byways.

§ 219.28 Determination of land suitable for timber harvest.

(a) *Lands where timber may not be harvested.* The plan must identify lands within the plan area where timber may not be harvested. These lands include:

(1) Lands where timber harvest would violate statute, Executive Order, or regulation and those lands that have been withdrawn from timber harvest by the Secretary of Agriculture or the Chief of the Forest Service;

(2) Lands where technology is not available for conducting timber harvesting without causing irreversible damage to soil, slope, or other watershed conditions or produce substantial and permanent impairment of the productivity of the land; and

(3) Lands where there are no assurances that such lands can be adequately restocked within 5 years after harvest;

(b) *Lands where timber may be harvested for timber production.* The responsible official may establish timber production as a multiple-use plan objective for lands not identified in paragraph (a) of this section if the costs of timber production are justified by the ecological, social, or economic benefits considering physical, economic, and other pertinent factors to the extent feasible. Lands where timber production is not established as a plan objective are deemed not suited for timber production. These lands must be reviewed by the responsible official at least once every 10 years, or as prescribed by law, to determine their suitability for timber production considering physical, economic, and other pertinent factors to the extent feasible. Based on this review, timber production may be established as a plan objective for these lands through amendment or revision of the plan.

(c) *Lands where timber may be harvested for other multiple-use values.* Except for lands identified in paragraph (a) of this section, timber may be harvested from land where timber production is not established as a plan objective if, based on a site-specific analysis, the responsible official determines and documents that such timber harvest would contribute to achievement of desired conditions and ecological sustainability, and is necessary to protect multiple-use values other than timber production.

§ 219.29 Limitation on timber harvest.

(a) *Estimate of the limitation of timber harvest.* The responsible official must estimate the amount of timber that can be sold annually in perpetuity on a sustained-yield basis from National Forest System lands other than those identified in § 219.28(a). This estimate must be based on the yield of timber that can be removed consistent with achievement of objectives or desired conditions in the applicable plan. In those cases where a national forest has less than 200,000 acres of forested land identified in lands other than those in § 219.28(a), two or more national forests may be combined for the purpose of estimating amount of timber that can be sold annually on a sustained-yield basis. Estimations for lands where timber production is established as a plan objective § 219.28(b) and estimations for lands identified in § 219.28(c) cannot be combined.

(b) *Limitation of timber harvest.* The responsible official must limit the sale of timber from the lands where timber production is an objective and from other lands to a quantity equal to or less than that estimated in paragraph (a) of this section.

(c) *Exceptions to limitations of timber harvest.* For purposes of limiting the sale of timber, the responsible official may sell timber from areas that are substantially affected by fire, wind, or other events, or for which there is an imminent threat from insects or disease, and may either substitute such timber for timber that would otherwise be sold or, if not feasible, sell such timber over and above the plan limit established in paragraph (b) of this section. If departure from the quantity of timber removal established in paragraph (b) of this section is necessary to meet overall multiple-use objectives, the requirements in 16 U.S.C. 1611 must be followed.

Planning Documentation

§ 219.30 Plan documentation.

A plan is a repository of documents that integrates and displays the desired conditions, objectives, standards, and other plan decisions that apply to a unit of the National Forest System. The plan also contains maps, monitoring and evaluation results, the annual monitoring and evaluation report, and other information relevant to how the plan area is to be managed. Planning documents should be clear, understandable, and readily available for public review. Plan documents should be updated through amendments, revision, and routine maintenance (§ 219.31). Plan documents include, at a minimum, the following:

(a) *A summary of the plan.* The summary is a concise description of the plan that includes a summary of the plan decisions and a description of the plan area and appropriate planning units. The summary should include a brief description of the ecological, social, and economic environments within the plan area and the overall strategy for maintenance or restoration of sustainability, including desired conditions and objectives for their achievement. The summary also includes appropriate maps, a description of the transportation system, utility corridors, land ownership patterns and proposed land ownership adjustments, charts, figures, photographs, and other information to enhance understanding.

(b) *Display of public uses.* The plan documents must identify the suitability of the plan area for various uses (§ 219.26) such as recreation uses, livestock grazing, timber harvest, and mineral developments. The plan documents must identify land where timber may not be harvested and where timber production is an objective (§ 219.28). The plan documents also must describe the limitations on the removal of timber (§ 219.29) and the standards for timber harvest and regeneration methods (§ 219.7(c)).

(c) *Plan decisions.* The plan documents must display or describe the plan decisions (§ 219.7).

(d) *Display of actions and outcomes.* The plan documents must also contain:

(1) An annually updated list or other display of proposed, authorized, and completed actions to achieve desired conditions and objectives within the plan area;

(2) A 2-year schedule, updated annually, of anticipated outcomes which may include anticipated uses, values, products, or services based on an estimate of Forest Service budget and capacity to perform the identified program of work. The estimate of Forest Service budget and capacity should be based on recent funding levels;

(3) A 2-year summary, updated annually, of the actual outcomes which may include specific uses, values, products, or services provided as a result of completed site-specific actions;

(4) A projected range of outcomes which may include anticipated uses, values, products, and services for the next 15 years, assuming current or likely budgets while considering other spending levels as appropriate. These projections are estimates and as such often contain a high degree of uncertainty; they are intended to describe expected progress in achieving desired conditions and objectives within the plan area. The projections are to be updated during revision of each plan;

(5) A description of the monitoring strategy to occur in the plan area and the annual monitoring and evaluation report; and

(6) A summary of the projected program of work, updated annually, including costs for inventories, assessments, proposed and authorized actions, and monitoring. The projected program of work must be based on reasonably anticipated funding levels. Reasonably anticipated funding levels should be based on recent funding levels. The plan documents must also include a description of the total current-year budget, funded actions, projections for future budgets over the next 2 years; and a display of the budget trends over at least the past 5 years.

(e) *Other components.* A plan must contain or reference a list of materials, Forest Service policies, and decisions used in forming plan decisions. The information should include, but is not limited to, lists of previous decision and environmental documents, assessments, conservation agreements and strategies, biological opinions, inventories, administrative studies, monitoring results, and research relevant to adoption of plan decisions.

§ 219.31 Maintenance of the plan and planning records.

(a) Each National Forest or Grassland Supervisor must maintain a complete set of the planning documents required under § 219.30 that constitute the plan for the unit. The set of documents must be readily available to the public using appropriate and relevant technology.

(b) The following administrative corrections and additions may be made at any time, are not plan amendments or revisions, and do not require public notice or the preparation of an environmental document under Forest Service NEPA procedures:

(1) Corrections and updates of data and maps;

(2) Updates to activity lists and schedules as required by § 219.30(d)(1)–(6);

(3) Corrections of typographical errors or other non-substantive changes; and

(4) Changes in monitoring methods other than those required in a monitoring strategy (§ 219.11(c)).

Objections and Appeals

§ 219.32 Objections to amendments or revisions.

(a) Any person may object to a proposed amendment or revision

prepared under the provisions of this subpart, except for an amendment or revision proposed by the Chief. The objection must be filed within 30 calendar days from the date that the Environmental Protection Agency publishes the notice of availability of a final environmental impact statement regarding a proposed amendment or revision in the **Federal Register,** or within 30 calendar days of the publication of a public notice of a proposed amendment not requiring preparation of an environmental impact statement. Within ten days after the close of the objection period, the Responsible Official shall publish notice of all objections in the local newspaper of record. An objection must be filed with the reviewing officer identified in the notice and contain:

(1) The name, mailing address, and telephone number of the person filing the objection;

(2) A specific statement of the basis for each objection; and

(3) A description of the objector's participation in the planning process for the proposed amendment or revision, including a copy of any relevant documents submitted during the planning process.

(b) Objectors may request meetings with the reviewing officer and the responsible official to discuss the objection, to narrow the issues, agree on facts, and explore opportunities for resolution. The reviewing officer must allow other interested persons to participate in such meetings. An interested person must file a request to participate in an objection within ten days after publication of the notice of objection as described in paragraph (a) of this section.

(c) The reviewing officer must respond, in writing, to an objection within a reasonable period of time and may respond to all objections in one response. The reviewing officer's response regarding an objection is the final decision of the Department of Agriculture.

(d) The responsible official may not approve a proposed amendment or revision until the reviewing officer has responded to all objections. A decision by the responsible official approving an amendment or revision must be consistent with the reviewing officer's response to objections to the proposed amendment or revision.

(e) Where the Forest Service is a participant in a multi-agency decision subject to objection under this subpart, the responsible official and reviewing officer may waive the objection procedures of this subpart to adopt the administrative review procedure of another participating federal agency, if the responsible official and the responsible official of the other agencies agree to provide a joint response to those who have filed for administrative review of the multi-agency decision.

(f) The information collection requirements of this section have been approved by the Office of Management and Budget and assigned control number 0596–0158.

§ 219.33 Appeals of site-specific decisions.

If a site-specific decision is proposed in conjunction with a plan amendment or revision, a person may object to the proposed plan amendment or revision as described in (§ 219.32). If a decision is made to authorize a site-specific action, a person may request administrative review of that decision as described in 36 CFR part 215.

Applicability and Transition

§ 219.34 Applicability.

The provisions of this subpart are applicable to all units of the National Forest System as defined by 16 U.S.C. 1609.

§ 219.35 Transition.

(a) The transition period begins on November 9, 2000 and ends upon the completion of the revision process (§ 219.9) for each unit of the National Forest System. During the transition period, the responsible official must consider the best available science in implementing and, if appropriate, amending the current plan.

(b) If, as of November 9, 2000, a plan revision or amendment has been initiated under the 1982 planning regulations in effect prior to November 9, 2000 (See 36 CFR part 219, revised as of July 1, 2000.) and if a notice of availability of a draft environmental impact statement or an environmental assessment is published by May 9, 2001 in the **Federal Register,** the responsible official may complete the amendment or revision process under the 1982 regulations or adjust the process to conform to the provisions of this subpart.

(c) If a review of lands not suited for timber production is required before the completion of the revision process, the review must take place as described by the provisions of § 219.28, except as provided in paragraph (b) of this section.

(d) Site-specific decisions made by the responsible official 3 years from November 9, 2000 and afterward must be in conformance with the provisions of this subpart.

(e) Within 1 year of November 9, 2000, the Regional Forester must withdraw the regional guide. When a regional guide is withdrawn, the Regional Forester must identify the decisions in the regional guide that are to be transferred to a regional supplement of the Forest Service directive system (36 CFR 200.4) or to one or more plans and give notice in the **Federal Register** of these actions. The transfer of direction from a regional guide to a regional supplement of the Forest Service directive system or to one or more plans does not constitute an amendment, revision, or site-specific action subject to Forest Service NEPA procedures.

(f) Within 3 years after completion of the revision process for a unit, the responsible official must complete the first monitoring and evaluation report as required in § 219.11(f).

(g) Within 1 year of November 9, 2000, the Chief of the Forest Service must establish a schedule for completion of the revision process for each unit of the National Forest System.

Definitions

§ 219.36 Definitions.

Definitions of the special terms used in this subpart are set out in alphabetical order in this section as follows:

Adaptive management: An approach to natural resource management wherein the effects of policies, plans, and actions are monitored for the purpose of learning and adjusting future management actions. Successive iteration of the adaptive process is essential in contributing to sustainability.

Assessment or analysis area: The geographic area included within the scope of a broad-scale assessment or local analysis.

Candidate species: Species identified by the United States Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS), which are considered to be candidates for listing under the Endangered Species Act as published in the **Federal Register**.

Conservation agreement: A formal agreement between the Forest Service and the USFWS and/or NMFS identifying management actions necessary to prevent the need to list species under the Endangered Species Act.

Current climatic period: The period of time since establishment of the modern major vegetation types, which typically encompass the late Holocene Epoch including the present, including likely climatic conditions within the planning

period. The climatic period is typically centuries to millennia in length, a period of time that is long enough to encompass the variability that species and ecosystems have experienced.

Desired condition: A statement describing a common vision for a specific area of land or type of land within the plan area. Statements of desired conditions should include the estimated time required for their achievement.

Desired non-native species: Those species of plants or animals which are not indigenous to an area but valued for their contribution to species diversity or their high social, cultural or economic value.

Disturbance regime: Actions, functions, or events that influence or maintain the structure, composition, or function of terrestrial or aquatic ecosystems. Natural disturbances include, among others, drought, floods, wind, fires, insects, and pathogens. Human-caused disturbances include actions such as recreational use, livestock grazing, mining, road construction, timber harvest, and the introduction of exotic species.

Diversity of plant and animal communities: The distribution and relative abundance of plant and animal communities and their component species occurring within an area.

Ecological conditions: Components of the biological and physical environment that can affect the diversity of plant and animal communities, including species viability, and the productive capacity of ecological systems. These could include the abundance and distribution of aquatic and terrestrial habitats, roads and other structural developments, human uses, and invasive and exotic species.

Ecological sustainability: The maintenance or restoration of the composition, structure, and processes of ecosystems including the diversity of plant and animal communities and the productive capacity of ecological systems.

Ecosystem composition: The plant and animal species and communities in the plan area.

Ecosystem processes: Ecological functions such as photosynthesis, energy flow, nutrient cycling, water movement, disturbance, and succession.

Ecosystem structure: The biological and physical attributes that characterize ecological systems.

Focal species: Focal species are surrogate measures used in the evaluation of ecological sustainability, including species and ecosystem diversity. The key characteristic of a focal species is that its status and trend provide insights to the integrity of the larger ecological system to which it belongs. Individual species, or groups of species that use habitat in similar ways or which perform similar ecological functions, may be identified as focal species. Focal species serve an umbrella function in terms of encompassing habitats needed for many other species, play a key role in maintaining community structure or processes, are sensitive to the changes likely to occur in the area, or otherwise serve as an indicator of ecological sustainability. Certain focal species may be used as surrogates to represent ecological conditions that provide for viability of some other species, rather than directly representing the population dynamics of those other species.

Forest Service NEPA procedures: The Forest Service policy and procedures for implementing the National Environmental Policy Act (NEPA) and the Council on Environmental Quality regulations (40 CFR chapter V) as described in Chapter 1950 of the Forest Service Manual and Forest Service Handbook 1909.15, Environmental Policy and Procedures Handbook (See 36 CFR 200.4 for availability).

Inherently rare species: A species is inherently rare if it occurs in only a limited number of locations, has low population numbers, or has both limited occurrences and low population numbers, and those conditions are natural characteristics of the life history and ecology of the species and not primarily the result of human disturbance.

Inventoried roadless areas: Areas are identified in a set of inventoried roadless area maps, contained in *Forest Service Roadless Area Conservation, Draft Environmental Impact Statement, Volume 2,* dated May 2000, which are held at the National headquarters office of the Forest Service, or any subsequent update or revision of those maps.

Major vegetation types: Plant communities, which are typically named after dominant plant species that are characteristic of the macroclimate and geology of the region or sub-region.

Native species: Species of the plant and animal kingdom indigenous to the plan area or assessment area.

Plan area: The geographic area of National Forest System lands covered by an individual land and resource management plan. The area may include one or more administrative units.

Productive capacity of ecological systems: The ability of an ecosystem to maintain primary productivity including its ability to sustain desirable conditions such as clean water, fertile soil, riparian habitat, and the diversity of plant and animal species; to sustain desirable human uses; and to renew itself following disturbance.

Range of variability: The expected range of variation in ecosystem composition, and structure that would be expected under natural disturbance regimes in the current climatic period. These regimes include the type, frequency, severity, and magnitude of disturbance in the absence of fire suppression and extensive commodity extraction.

Reference landscapes: Places identified in the plan area where the conditions and trends of ecosystem composition, structure, and processes are deemed useful for setting objectives for desired conditions and for judging the effectiveness of plan decisions.

Responsible official: The officer with the authority and responsibility to oversee the planning process and make decisions on proposed actions.

Reviewing officer: The supervisor of the responsible official.

Social and economic sustainability: Meeting the economic, social, aesthetic, and cultural needs and desires of current generations without reducing the capacity of the environment to provide for the needs and desires of future generations, considering both local communities and the nation as a whole. It also involves the capacity of citizens to communicate effectively with each other and to make sound choices about their environment.

Species: Any member of the animal or plant kingdom that is described as a species in a peer-reviewed scientific publication and is identified as a species by the responsible official pursuant to a plan decision, and must include all species listed under the Endangered Species Act as threatened, endangered, candidate, or proposed for listing by the U.S. Fish and Wildlife Service or National Marine Fisheries Service.

Species-at-risk: Federally listed endangered, threatened, candidate, and proposed species and other species for which loss of viability, including reduction in distribution or abundance, is a concern within the plan area. Other species-at-risk may include sensitive species and state listed species. A species-at-risk also may be selected as a focal species.

Species viability: A species consisting of self-sustaining and interacting populations that are well distributed through the species' range. Self-sustaining populations are those that are sufficiently abundant and have sufficient diversity to display the array of life history strategies and forms to

provide for their long-term persistence and adaptability over time.

Successional stages: The different structural and compositional phases of vegetation development of forests and grasslands that occur over time following disturbances that kill, remove, or reduce vegetation and include the major developmental or seral stages that occur within a particular environment.

Timber production: The sustained long-term and periodic harvest of wood fiber from National Forest System lands undertaken in support of social and economic objectives identified in one or more land and resource management plans. For purposes of this regulation, the term timber production includes fuel wood.

Undeveloped areas: Areas, including but not limited to inventoried roadless areas and unroaded areas, within national forests or grasslands that are of sufficient size and generally untrammeled by human activities such that they are appropriate for consideration for wilderness designation in the planning process.

Unroaded areas: Any area, without the presence of a classified road, of a size and configuration sufficient to protect the inherent characteristics associated with its roadless condition. Unroaded areas do not overlap with inventoried roadless areas.

Subpart B—[Reserved]

Dated: October 31, 2000.

Dan Glickman,

Secretary.

[FR Doc. 00–28580 Filed 11–8–00; 8:45 am]

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Federal Register

Thursday,
November 9, 2000

Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 923

Sweet Cherries Grown in Designated Counties in Washington; Recommended Decision and Opportunity To File Written Exceptions to Proposed Amendment of Marketing Agreement No. 134 and Marketing Order No. 923; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 923

[Docket Nos. 99AMS–FV–923–A1; FV00–923–1]

Sweet Cherries Grown in Designated Counties in Washington; Recommended Decision and Opportunity To File Written Exceptions to Proposed Amendment of Marketing Agreement No. 134 and Marketing Order No. 923

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and opportunity to file exceptions.

SUMMARY: This recommended decision invites written exceptions on proposed amendments to the marketing agreement and order for sweet cherries grown in six counties in eastern Washington. Six proposals were submitted by the Washington Cherry Marketing Committee (Committee), which is responsible for local administration of the order. The Committee's proposals would: increase the production area to cover the area in the State of Washington east of the Cascade Mountain Range and allow for special purpose shipments of cherries to packing operations outside the production area; increase representation on the Committee by adding an additional handler member; provide for late payment and interest charges on delinquent assessments; authorize establishment of container marking requirements; and allow prospective Committee members and alternates to qualify for membership by filing a single form. The Fruit and Vegetable Programs (F&V) of the Agricultural Marketing Service (AMS) proposed the establishment of tenure requirements for Committee members and to require that continuance referenda be conducted every six years. AMS also proposed to allow such changes as may be necessary to the order to conform with any amendment that may result from the hearing. These proposals are intended to improve the operation and functioning of the Washington sweet cherry marketing order program.

DATES: Written exceptions must be filed by December 11, 2000.

ADDRESSES: Written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, room 1081–S, Washington, DC 20250–9200, Facsimile number (202) 720–9776. Four copies of all written exceptions should be submitted and they should reference the docket numbers and the date and page number of this issue of the **Federal Register**. Exceptions will be made available for public inspection in the Office of the Hearing Clerk during regular business hours, or can be viewed at: http://www.ams.usda.gov/fv/moab.html.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, Washington, D.C. 20250–0237; telephone: (202) 720–2491, or 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: Prior document in this proceeding: Notice of Hearing issued on November 3, 1999, and published in the November 8, 1999, issue of the **Federal Register** (64 FR 60733).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Question and Answer Overview

What circumstances led to this recommended decision?

The Washington Cherry Marketing Committee (Committee), which is responsible for local administration of the marketing order, recommended amending the current order. A hearing was held on these proposed amendments in Yakima, Washington, on November 16, 1999.

The Washington Cherry Marketing Order was created in 1957 and has never been amended. Since that time, cherry production has dramatically increased in areas outside the current 6-county production area.

The marketing order's primary authority is the use of grade, size and container regulations for fresh shipments of cherries from the production area. The purpose of these regulations is to ensure the shipment of high quality cherries. The order has allowed the industry to develop the reputation for shipping a quality product, which has allowed producers to ship and sell sweet cherries in a more stable marketplace.

The primary purpose of this proceeding is to expand the production area to include the other sweet cherry producing counties in Washington and maintain the high quality image of the Washington sweet cherry. This proceeding would also allow shipments of cherries outside the production area for packing, to accommodate growers in the proposed production area who have their cherries packed in Oregon.

The Committee also recommended increasing representation on the Committee, allowing for late payment and interest charges on unpaid assessments, authorizing container marking requirements and other administrative changes.

AMS proposed establishing a limit on the number of consecutive terms a person may serve as a member on the Committee and requiring that continuance referenda be conducted every six years to ascertain industry support for the order.

Who would be impacted by this action?

Growers and handlers of sweet cherries in the current and proposed production area would be affected by these amendments. Handlers would be required to pay assessments based on the amount of cherries handled. The current assessment rate is 75 cents per ton of cherries handled. Handlers would also be required to abide by the regulations in effect under the order which includes obtaining Federal/State inspections on all cherries to ensure that marketing order requirements are met. Current regulations specify certain size, maturity and pack requirements and are based on the State of Washington grade standards.

Field-run cherries from Washington growers sent to Oregon packers also would have to meet these requirements as well.

How can I comment on these proposals?

Written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, room 1081–S, Washington, DC 20250–9200, Facsimile number (202) 720–9776. Four copies of all written exceptions should be submitted and they should reference the docket numbers and the date and page number of this issue of the **Federal Register**. Exceptions will be made available for public inspection in the Office of the Hearing Clerk during regular business hours, or can be viewed at: http://www.ams.usda.gov/fv/moab.html.

All exceptions will be considered before issuing any final decision.

What are the next steps after the recommended decision?

USDA will evaluate the exceptions and, if it is decided to continue with the proceeding, a Secretary's Decision and Referendum Order will be issued. A producer referendum will be conducted and will include all affected producers. The referendum will be conducted by mail ballot, and producers can vote on each material issue presented. There are seven material issues in this recommended decision.

To become effective, the amendments require approval of two-thirds of the producers voting in the referendum or approval by two-thirds of the volume of production represented by the producers voting in the referendum. If the vote favors any or all of the amendments, the Department prepares a final order effectuating the amendments.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed amendment of Marketing Agreement No. 134 and Marketing Order No. 923, regulating the handling of sweet cherries grown in designated counties in Washington, (hereinafter referred to as the order), and the opportunity to file written exceptions thereto.

This action is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the ''Act,'' and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900).

The proposed amendment of Marketing Agreement No. 134 and Order No. 923 is based on the record of a public hearing held in Yakima, Washington, on November 16, 1999. Notice of this hearing was published in the **Federal Register** on November 8, 1999. The notice of hearing contained proposals submitted by the Committee and the Department.

The Committee's proposed amendments would: Increase the production area to cover the area in the State of Washington east of the Cascade Mountain Range, redefine the districts currently established under the order and allow for special purpose shipments of cherries to packing operations outside the production area; Increase representation on the Committee by adding an additional handler member; Provide for late payment and interest charges on delinquent assessments; Authorize establishment of container marking requirements; and Allow prospective Committee members and alternates to qualify for membership by filing a single form.

Also, AMS proposed to establish a limit on the number of consecutive terms a person may serve as a member on the Committee and to require that continuance referenda be conducted on a periodic basis to ascertain industry support for the order.

At the conclusion of the hearing, the Administrative Law Judge fixed January 20, 2000, as the final date for interested persons to file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing. None were filed.

Material Issues

The material issues of record addressed in this decision are as follows:

(1) Whether to increase the production area to cover the area in the State of Washington east of the Cascade Mountain Range; to redefine the districts established under the order; and to authorize special purpose shipments, with appropriate safeguards, allowing movement of cherries to packing facilities outside the production area;

(2) Whether to increase representation on the Committee by adding one additional handler member;

(3) Whether to authorize the Committee, with USDA approval, to collect late payment and interest charges on delinquent assessments;

(4) Whether to authorize the Committee, with USDA approval, to establish container marking requirements;

(5) Whether to authorize Committee nominees to qualify as a member or alternate by filing a written acceptance of willingness to serve prior to the selection;

(6) Whether to establish a limit on the number of consecutive terms a person may serve as a member on the Committee; and

(7) Whether to require that continuance referenda be conducted on a periodic basis to ascertain industry support for the order.

Findings and Conclusions

The findings and conclusions on the material issues, all of which are based on evidence presented at the hearing and the record thereof, are:

Material Issue Number 1

The definition of production area under § 923.4 should be amended to include the counties of Okanogan, Chelan, Kittitas, Yakima, Klickitat in the State of Washington and all of the counties in Washington lying east thereof and § 923.14 should be amended to include the additional counties in the two districts established under the order. In addition, § 923.54 should be amended to authorize special purpose shipments, with appropriate safeguards, allowing movement of cherries to packing operations outside the production area.

Currently, the production area includes only the counties of Okanogan, Chelan, Douglas, Grant, Yakima and Benton in the State of Washington. District 1 includes the counties of Chelan, Okanogan, Douglas and Grant. District 2 includes the counties of Yakima and Benton. There are no provisions in the current order that authorize uninspected cherries to be shipped outside the production area for packing.

The marketing order was promulgated in 1957. At that time, the primary objective of the order was to provide consumers with a uniform product so that buyers were assured of quality. The order has never been amended. Since that time, many changes have occurred in the sweet cherry industry. New areas of production have developed and marketing practices have changed. For example, Franklin County is not currently regulated under the marketing order, but reports indicate that sweet cherry trees have been planted in that county in recent years. This is true in other non-regulated counties as well. If 12 counties in the State of Washington are producing cherries in significant volume, and only 6 are regulated under the order, inconsistencies in quality could occur which could impact the current high quality image of Washington sweet cherries. The proposed amendment intends to update the order to reflect this change. The proposed amendment also would redefine the districts established under the order to include the new counties in the existing districts.

In addition, many of the cherries grown in the counties proposed to be added to the production area are currently packed in Oregon. If the production area is expanded to include these counties, it is recommended that sweet cherry shipments be authorized outside the production area to these packing facilities for preparing for market. This would be done under the special purpose authority contained in § 923.54 of the order. Grower/handlers could deliver cherries to those Oregon packing operations that agree to abide by the marketing order requirements for such cherries, including obtaining inspections and paying assessments. The Committee would establish

safeguards to ensure that marketing order requirements are being met.

Expansion of Production Area

When the order was created in 1957, sweet cherries were primarily grown in only 6 counties in the State of Washington. The 6 counties that are currently regulated are Okanogan, Chelan, Douglas, Grant, Benton and Yakima. The 14 additional counties proposed for inclusion are Kittitas, Klickitat, Ferry, Stevens, Pend Oreille, Lincoln, Spokane, Adams, Whitman, Franklin, Walla Walla, Columbia, Garfield and Asotin.

Cherry production has dramatically increased in areas within the State of Washington that are outside the current production area. As more land has come into irrigation and farmers look for alternative crops to grow, sweet cherry production is expected to continue to increase in areas outside the current production area.

The total production of sweet cherries in Washington was reported by the National Agricultural Statistics Service (NASS), USDA to be 96,000 tons in 1998 and 95,000 tons in 1997. Production by county is not available. However, NASS does report production information by Fruit Reporting Districts and this information is available annually for 1993 through 1997.

The West Fruit Reporting District produces a minimal amount of sweet cherries (50 tons per year) and is not proposed to be included in the order's production area. In addition to the low level of production, testimony revealed that, due to weather conditions, it would be unlikely that cherries could be commercially produced in significant amounts west of the Cascade Mountain Range in Washington. Average production in this area is 50 tons per year. Testimony indicated that excessive rain causes serious quality problems with sweet cherries, such as cracking. Generally, weather conditions in eastern Washington are more favorable for growing sweet cherries, as well as other horticultural crops.

The Mid-Columbia Fruit Reporting District includes the counties of Wahkiakum, Cowlitz, Clark, Skamania, and Klickitat. These counties produced an average of 1,550 tons during the 1993 though 1997 seasons. Only Klickitat County would be included in the proposed regulated area. The other four counties are in the western part of the State and have minimal sweet cherry production and no potential for significant production. These counties not included in the proposed production area have weather conditions similar to the counties in the West Fruit Reporting District.

The Wenatchee Fruit Reporting District includes the counties of Okanogan, Chelan, and Douglas. This is one of the two biggest sweet cherry producing districts with an average production of 34,360 tons from 1993 through 1997. These three counties are currently regulated under the federal marketing order.

The Yakima Valley Fruit Reporting District is the other large sweet cherry producing district with an average production of 35,830 tons from 1993 through 1997. Yakima County is currently regulated, while Kittitas County is proposed for inclusion in the regulated area.

The Columbia Basin Fruit Reporting District includes the counties of Grant, Adams, and Franklin. Grant is currently regulated under the federal marketing order, while Adams and Franklin counties are proposed additions to the regulated area. The Columbia Basin Fruit Reporting District averaged 3,410 tons annually over the past 5 seasons.

The Northeast Fruit Reporting District is made-up of Ferry, Stevens, Pend Oreille, Lincoln, and Spokane counties. The average annual production from this fruit-reporting district is 100 tons. All of these counties would be included in the proposed production area.

The Southeast Fruit Reporting District is comprised of Whitman, Walla Walla, Columbia, Garfield, and Asotin counties. Average production from 1993 through 1997 for this fruit-reporting district was 100 tons. Again, the proposed production area would include all of these counties.

Of the 14 counties that are proposed to be added to the marketing order, 10 currently produce cherries (Franklin, Klickitat, Walla Walla, Spokane, Stevens, Asotin, Lincoln, Kittitas, Adams, and Whitman). Production of cherries is not shown for the counties of Ferry, Pend Oreille, Columbia, and Garfield.

Testimony indicated that it is likely for these current non-producing counties to produce cherries in the future. One grower testified that there are newly planted cherry orchards in Pend Oreille, one of the counties proposed to be in the expanded production area, that currently lists no commercial production. Testimony indicated that these four counties with no current statistics on cherry orchards, could produce cherries in significant volume in the future. The climatic conditions in those counties have potential for future growth. Additional testimony revealed that cattle and wheat farmers in these areas are looking for alternative crops to enhance their operations and cherries could be a reasonable choice.

As discussed later in this decision, the Committee considered various alternatives and concluded that the proposal it submitted on the expansion of the production area is the most reasonable alternative. The proposed production area is the smallest regional area, which is practicable, while maintaining program effectiveness.

Testimony revealed that Washington cherries have a very positive image to buyers and consumers. When purchases are made of Washington cherries, the buyer does not necessarily know if the cherries originate from counties under the marketing order or not. If one county ships an inferior cherry, the entire state's image could be impacted. Testimony indicated that most of the facilities that pack Washington cherries (both those inside and outside the production area) already pack to the marketing order requirements. However, without modifying the order, a greater possibility exists for more cherries being shipped of an inferior quality. Testimony further indicated that a grower's success is partly based on the quality of fruit delivered. As production levels continue to increase, the value of maintaining a high quality image will assist growers from encountering decreasing prices. The marketing order assists all growers in that handlers prepare their cherries to a certain quality level, which helps to maintain price levels.

Testimony was received at the hearing on the costs associated with the proposed amendments. The current assessment of 75 cents per ton comprises less than 1 percent of total production costs. The 1999–2000 budget for the Committee is $62,815, of which $3,388 is earmarked for compliance efforts. Testimony indicated that increased compliance and administrative costs necessary to monitor this proposal would not be significant. Testimony further indicated that the annual assessment could even be reduced due to additional cherries being assessed with the expansion of the production area. Testimony at the hearing indicated that the benefits of strengthening the market would outweigh any increase in costs. Adversely, if the production area is not redefined, testimony indicated that the Washington cherry image could be harmed, as more and more areas are growing cherries. In addition, indications are that a large number of non-bearing acres are coming into production inside and outside the current production area. Adding to the

increase in production are growers of other crops, such as grain and apples, looking for alternative crops to grow in order to supplement incomes. Sweet cherries are an option these growers consider.

Applying grades and standards to the new production areas should provide benefits to producers. The grades and standards allow small producers the opportunity to develop a reputation for producing and delivering a consistent, high quality product. These grades and standards provide incentives and rewards for the production of high quality product. In addition, the establishment of uniform grades and standards across all the production areas provides a level field for competition among both small and large growers. Testimony indicated that as production increases, quality issues become more important. Production is expected to increase in excess of 100,000 tons for the first time in the industry's future.

As an example of the impact inconsistent quality can have on a market, testimony was presented on the Rainier cherry market. Although Rainier cherries are included in the marketing order, they were specifically exempt from quality requirements until a few years ago. Some handlers packed high quality Rainier cherries and received a premium price. When other growers and handlers realized the acceptance of the Rainier, various ranges of quality were shipped in anticipation of receiving a premium price. However, buyers became reluctant to purchase Rainier cherries due to inconsistent quality. The Committee recommended minimum quality requirements for Rainier cherries which were established by regulation under the order. Assurance of consistent quality has resulted in the Rainier cherry market becoming more stable, and Rainiers are again considered a premium product.

The Washington cherry market distinguishes itself from competitors. More product is available from Washington than the other cherry producing States. The Washington cherry market is more diverse and national in scope, and testimony indicated that buyers have confidence in Washington sweet cherries due to consistent quality. Testimony revealed that this distinction is a direct result of the establishment of minimum quality requirements under the marketing order.

Testimony was received from a cooperative cherry handler that represents 108 growers, 27 of which are located in the proposed production area (the balance are in the current production area.) This handler testified that his company has two packing facilities, one inside the current production area and one in the proposed production area. It was this handler's position that its customers and growers must have confidence in their ability to pack a high quality consistent product.

The witness testified that bringing all his growers under the marketing order would provide better returns for these growers and help bolster the image of the Washington sweet cherry. He stated that implementation of these proposals would level the playing field by eliminating confusion and creating more orderly marketing. This handler would anticipate no significant additional costs as his company already packs all cherries received to the marketing order's minimum quality requirements. It was this handler's position that the benefits would outweigh the costs to cherry growers.

This handler stated that quality issues are foremost to the industry and equate to buyer confidence. Repeat business is critical to the cooperative and any bad perceptions could be detrimental to future business. If all major cherry producing counties were required to maintain the same quality requirements, consistency in quality would prevail. With increasing levels of production in Washington, other U.S. states and in foreign countries, quality becomes more and more important. Consumers view Washington cherries as a premium preferred product and this positive image could suffer if quality is not maintained.

When regulations are in place, all cherries in the production area are required to be inspected and certified as meeting established requirements. Testimony indicated that increased costs associated with more cherries being inspected would be offset by consistent quality and a stable marketplace. Inspection costs are discussed in detail later in this document.

Production has and continues to increase. The increased production is coming from the traditional growing areas in addition to the new production areas. The peak shipping week occurs during the last week of June. With new production and the plantings of late-season varieties of sweet cherries, the marketing window for shipping Washington sweet cherries is expanding into August.

Minimum quality and size standards in the proposed production area would maintain the integrity of the product so that the commodity's overall quality image is not diminished by a low quality sample. The principal objective of a grading system is to make the market work more efficiently. Minimum quality and size requirements would improve information between buyers and sellers. Contracts could be made based on grade specifications, and buyers need not personally inspect each lot of product. Standardization of quality and size reduces uncertainty between buyers and sellers, and this helps reduce marketing costs. The goal of an effective grading system is to improve quality and size. Minimum quality and size standards would help ensure that substandard product does not find its way to the market and destroy consumer confidence and harm producer returns. Cherries that do not make the specified grade and size requirements can be shipped to processing outlets.

Record evidence supports expanding the production area to include all counties in the State of Washington east of the Cascade Mountain Range.

Redefining Districts To Include Expanded Production Area

For purposes of allocating Committee membership, the production area is divided into two geographic districts. If the production area is expanded, it will be necessary to incorporate the additional counties into the districts currently established under the order. The Committee discussed dividing the production area into three districts and distributing the counties and membership across these districts. The Committee was concerned that this would entail increasing Committee membership by more than one handler member as proposed and discussed in Material Issue No. 2. The record indicated that the Committee believed a 16 member Committee would be the most effective. Therefore, it was decided to distribute the new counties proportionately between the two existing districts. District 1 is currently composed of the counties of Chelan, Okanogan, Douglas and Grant. This proposal adds the counties of Lincoln, Spokane, Pend Oreille, Stevens and Ferry. District 2 is currently composed of the counties of Yakima and Benton. This proposal adds the counties of Kittitas, Klickitat, Adams, Franklin, Walla Walla, Whitman, Columbia, Garfield and Asotin.

The proposed District 1 encompasses the northern part of the production area and District 2 encompasses the southern part. In 1997 production in proposed District 1 was approximately 44,300 tons of sweet cherries and in proposed District 2, 45,500 tons. In addition, the tonnage packed in each proposed district is about the same.

Record evidence supports redefining the districts to incorporate the additional counties into the currently established districts in the order.

Authority To Deliver Cherries to Packing Facilities Outside the Production Area

The term ''handle'' under § 923.13 means to sell, consign, deliver, or transport cherries or cause the sale, consignment, delivery, or transportation of cherries in the current of commerce from any point within the production area to any point outside. All cherries ''handled'' must meet marketing order requirements, but the requirements can be waived for special purpose shipments which are defined in § 923.54 of the order. The Committee has proposed adding as ''special purpose shipments'' the authority to ship cherries outside the production area for grading or packing.

The Committee has been discussing amending the order for many years. In 1990, the subcommittee appointed to study the expansion of the production area, discussed expanding the production area with producers located outside the production area. Out of these discussions, it was determined that if the production area was expanded, the authority to grade and pack outside the production area was also needed in order to allow many growers in the proposed production area to continue having their cherries packed in Oregon. This would help avoid financial hardships for these growers by maintaining continuity in the packing of their cherries.

A grower/handler from Oregon who does pack Washington cherries testified that some growers who are in the proposed production area have always had their cherries packed at plants outside the production area. His company has operated an orchard at Dallesport, Washington for over 17 years and has always packed the fruit in The Dalles, Oregon. This witness testified that much is invested in his facilities and it would be an economic hardship not to be able to pack and ship his fruit at his own plant. This is a good example of why the proposals for expansion of the production area and shipments outside the production area for packing should be considered as one material issue. This situation applies to many other growers in Dallesport and White Salmon, Washington. Expenses for growers could be dramatically increased if they are required to change their packing facilities to those that are farther from their orchards but in the production area. The four closest packing operations to Dallesport, Washington are in The Dalles, Oregon. The closest packing facility in Washington to that growing area is in Yakima, which is over 50 miles away.

In addition to proximity to their orchards, there are other reasons growers select certain packing facilities. Many growers select packers based on the quality of pack, the packinghouse image and/or whether or not the packing facility is a cooperative. These options for growers would be limited if they were no longer able to have their cherries packed in Oregon.

There are approximately 75 packing operations in the current production area and two additional packing houses in the proposed production area. There are four packing operations in Oregon that pack Washington cherries for grower/handlers. Testimony indicated that existing packing facilities in the State of Washington could have difficulty handling the volume of Washington cherries if the production continues to increase. The proposal to allow shipments of Washington cherries outside the production area for packing would specifically address this issue. This proposal would provide flexibility in moving product in and out of the marketing order production area while ensuring that quality objectives are not compromised.

WSDA currently has an agreement with the Oregon Department of Agriculture covering the border area between both states, namely in the Bingen, Washington area, where the Oregon Department of Agriculture conducts inspections to Washington standards and marketing order specifications, using appropriate Washington certificates. Testimony indicated this agreement works well, as it assists the industry in supplying quality inspections in that area.

Because of the agreement with the Oregon Department of Agriculture, there is assurance that any Washington product that is inspected by the Oregon Department of Agriculture is inspected to Washington standards or to Washington marketing order requirements. There is documentation that verifies product inspections and this process has proven to be successful in this area. Testimony indicated that the inspection office does not envision any oversight burden imposed by these proposals that it cannot meet.

Safeguard provisions are incorporated into this proposal to ensure compliance with the proposal to authorize shipments outside the production area. This would be done under the special purpose shipment authority contained in § 923.54 of the order. Grower/handlers could deliver cherries to those Oregon packing operations that agree to abide by the marketing order requirements for such cherries. The Committee would establish additional safeguards to ensure that marketing order requirements are being met. Although no specific procedures have been developed as yet, such information may include a requirement that packing facilities that grade and pack cherries outside the production area apply to the Committee and provide pertinent information necessary to safeguard marketing order provisions. If a packing facility does not abide by applicable requirements, the committee can rescind their agreement and Washington cherries could not be delivered to that facility.

The WSDA assists in monitoring for compliance with the marketing order and would continue to do so. The WSDA provides the Committee with copies of all Federal/State inspection note sheets. If WSDA notifies the Committee of a potential marketing order violation, the Committee takes steps to ensure compliance. Compliance is currently not a problem with the Committee.

The Committee proposal concerning this part of the amendment was designed to address this specific situation involving the packing facilities in Oregon. The proposed order language states that authority for ''shipments of cherries for grading and packing to specified locations outside the production area'' would be authorized. The specified locations would include the areas where these packing facilities are located in Oregon across the Washington border. This amendment is intended to provide flexibility in addressing the current situation of expanding the production area and to allow packing facilities currently being used to pack Washington cherries to continue to do so.

Record evidence supports authorizing shipments, with appropriate safeguards, outside the production area for packing.

Combining Expansion of Production Area, Redefining Districts and Shipments Outside the Production Area as One Issue

Record evidence supports that the proposals to expand the production area, to redefine the districts and to authorize shipments outside the production area for packing be considered as one votable issue in a referendum. Evidence presented at the hearing demonstrated that these proposals are inextricably intertwined and would cause confusion in the referendum if not voted upon as a single issue. The proposal to redefine the districts to allocate the new counties

between the existing districts obviously is only necessary if the production area is expanded. Therefore, this proposal should be combined with the proposal to expand the production area.

Regarding combining the proposals on the production area expansion and the authority to authorize shipments of uninspected cherries outside the production area for packing, these proposals are reliant on each other and should be combined as one issue. Failure for both aspects to pass in referendum could result in hardships for grower/handlers, especially those grower/handlers who currently ship their cherries to Oregon for packing. There are grower/handlers in the proposed production area whose orchards are closer to packing plants in Oregon than in Washington and who currently ship their cherries to these plants for packing.

The record supports these proposed amendments. For the above reasons, the proposal to amend § 923.4 *Production area* by including the counties of Okanogan, Chelan, Kittitas, Yakima, Klickitat in the State of Washington and all of the counties in Washington lying east; the proposal to amend § 923.14 *District* by including the additional counties under Districts 1 and 2; and the proposal to amend § 923.54 *Special purpose shipments* to authorize special purpose shipments, with appropriate safeguards, allowing movement of cherries to packing operations outside the production area should be voted on in the referendum as one material issue.

Material Issue Number 2

Section 923.20 should be amended to increase representation on the Committee by adding one additional handler member representing District 1. In addition, § 923.20 should be amended to provide equal grower representation in each district.

The current 15-member Committee consists of four grower members representing District 1, six grower members representing District 2, two handler members representing District 1 and three handler members representing District 2. All members have alternates. District 1 includes the counties of Chelan, Okanogan, Douglas, and Grant. District 2 includes the counties of Yakima and Benton. If the proposal to expand the production area is implemented, District 1 would include the counties of Chelan, Okanogan, Douglas, Grant, Lincoln, Spokane, Pend Oreille, Stevens and Ferry. District 2 would include the counties of Kittitas, Yakima, Klickitat, Benton, Adams, Franklin, Walla Walla, Whitman, Columbia, Garfield and Asotin.

The Committee believes that producer representation in District 1 should remain at 4 members and District 2 should remain at 6 members. A witness testified that the amount of tonnage produced is significantly greater in District 2. However, significant quantities of cherries produced in District 2 are packed and graded in District 1. It was estimated that total product packed is nearly equal in both districts. By adding one handler member to District 1, both districts would be equally represented by 3 handler members.

Record evidence supports increasing the membership on the Committee by one handler member. The Washington sweet cherry industry is growing. Bearing acres and production are increasing and markets, including exports, are expanding. Although the Committee's recommendation to increase the number of Committee members by one initially related to the expansion of the production area, the record testimony revealed that the Committee would prefer to have an additional handler member even if the production area is not expanded. Therefore, this material issue is not tied to the expansion of the production area and should be addressed and voted in the referendum on its own merits.

Increasing representation on the Committee would allow additional input in Committee decisions. Having equal handler representation for each district is reasonable considering that the volume handled is similar in each district, whether or not the production area is expanded.

The Committee discussed alternatives to address appropriate representation and districting should the production area be expanded. The Committee agreed that 16 members was an appropriate number for the Committee to be most effective while adequately representing the expanded production area. The alternatives are discussed in more detail later in this document.

Further, an economic report submitted as evidence at the hearing does not support the proponents' statement that the amount of tonnage produced is significantly greater in District 2. The report shows that under the current districts, District 1 has approximately 814 farms growing sweet cherries on approximately 10,000 acres of land. In District 2, approximately 621 farms produce sweet cherries on approximately 9,141 acres of land.

In the proposed districts, District 1 would have approximately 870 farms growing cherries on 10,074 acres. District 2 would have approximately 753 farms that grow cherries on approximately 11,560 acres of land. Production figures show that in 1997, production in proposed District 1 was approximately 44,300 tons of sweet cherries and in proposed District 2, production was approximately 45,500 tons.

These statistics indicate that volume of production between Districts 1 and 2 is not significantly different in the current and proposed districts. Record evidence revealed that District 2 has slightly less growing acreage currently than District 1 and would have slightly more if the proposal to expand the production area were adopted. Based on record testimony, the Committee is striving for handler representation based on the volume of cherries handled in each district. The record indicated that the Committee intends that grower representation be based on the volume of production for each district. Since statistics show that production in the proposed districts would be relatively the same, grower membership between districts should be equal. Therefore, the record supports modifying the current representation of 4 growers for District 1 and 6 for District 2 to 5 grower members and their respective alternatives per district.

The marketing order provides the authority to redefine the production area districts and to reapportion the representation of any district on the Committee. The Committee may recommend changes in district representation if cherry production within the districts and the production area shifts. These changes can be accomplished through informal rulemaking.

Currently, 12 members are required to make a quorum under the 15-member Committee. Also, 9 concurring votes are currently required to pass any Committee action. A witness testified that quorum and concurring voting requirements were not discussed at meetings when the issue to increase membership was discussed. However, the current quorum and voting numbers would still be considered a ''super'' majority should the membership on the Committee increase by one handler member. The witness indicated that the current requirements would be adequate and no changes are being recommended to the quorum and voting requirements.

Seemingly, record evidence suggests increasing representation on the Committee by one handler member and providing for equal grower representation in each district.

Material Issue Number 3

Section 923.41 should be amended to add authority to require handlers to pay

late payment charges and/or interest on late assessment payments in order to encourage timely remittance of assessments by handlers.

Currently, § 923.41 requires handlers to pay to the Committee on demand assessments on cherries received by the handler. There is no provision for a late payment or interest charge.

Record testimony revealed that most handlers pay assessments promptly and timely. However, the Committee's operating budget is relatively small and late payments could be detrimental to the operations of the Committee. Three marketing orders are administered by one manager and share expenses in order to mitigate costs. The other marketing orders are the Washington Apricot marketing order (Marketing Order No. 922) and the Washington-Oregon Fresh Prune marketing order (Marketing Order No. 924). Assessments collected under the sweet cherry order represent 80 percent of the combined budgets. For example, the 1999–2000 total annual budget for sweet cherries is $62,815, while the two other program budgets combined total $18,600. Testimony indicated that even a few hundred dollars in late assessments could be detrimental to the administration of the cherry program.

Testimony further indicated that failure to incorporate a charge for late payment of assessments would not be equitable for handlers who pay on time. These handlers would be financing Committee operations while late paying handlers would benefit from the Committee programs.

Late payment and interest charges for delinquent assessments would provide an incentive for handlers to pay on time. This would result in fewer funds needed by the Committee for collection activities. Also, the fees derived from late payment and interest charges would partially compensate the Committee for its collection efforts.

The Committee envisions implementing the specifics of the late payment and/or interest charges through informal rulemaking with the Secretary's approval. This would allow the Committee to remain flexible with the establishment of the interest and late payment charge. The Committee anticipates that the billing statements would include a date at which time a late payment charge of a specified amount would be assessed. The statement would advise the handler that in addition to the late payment charge, an interest payment of a certain percent on the unpaid balance would be assessed each month thereafter. Testimony indicated that an example of such charges would be similar to what commercial businesses charge, such as a $25 late fee, and a one and a half percent per month charge on the unpaid balance.

The Department agrees that authorizing late payment and interest charges would encourage prompt payment and thereby, help ensure that the Committee operates effectively. The annual sweet cherry budget is small enough that even a few handlers paying late could disrupt Committee operations.

Accordingly, record evidence supports this aspect of the proposal. However, in the proposed amendatory language, a provision was included stating ''the Committee may also recommend other methods of assessment collection with the approval of the Secretary.'' Testimony revealed that other methods of assessment collection would be filing liens against handlers for failure to pay assessments or suing a handler in small claims court for unpaid assessments.

There is no authority under the Act allowing the Committee to file liens or sue in small claims court for unpaid assessments. Therefore, this provision should not be included in the proposed amendment.

Material Issue Number 4

Section 923.52 should be amended to authorize the Committee to establish container marking requirements.

Currently, the order provides the authority to fix the size, capacity, weight, dimensions, or pack of containers that may be used to ship fresh sweet cherries. The order does not include authority to establish marking requirements.

Testimony indicated that, in the cherry industry, the customer dictates specifications of products such as quality, packaging and variety. The quality, size, container and pack requirements currently authorized under the order address many of these preferences. These provisions are used by the Committee and modified with industry changes and customer preferences. They help to maintain a positive image for Washington sweet cherries and stimulate repeat business. The proposal to add the authority to implement marking requirements would add an additional marketing tool for the Committee to continue meeting customer needs.

Washington sweet cherry bearing acres are continually increasing, which has resulted in increased production. Since 1959, the production of sweet cherries has increased by over 500 percent. Production levels are trending toward 100,000 tons in the near future. New national markets have developed and exports now play an important role in the marketing of sweet cherries. Exports represented 40 percent of fresh sweet cherry shipments in 1998. In 1998, exports increased 35 percent over the 1997 levels, achieving a new high of 28,560 tons.

Testimony revealed that two containers are primarily used in packing sweet cherries currently. However, in response to customer preferences, the industry is moving to multiple packaging and multiple varieties of cherries. As packaging and varieties become more diverse and production continues to increase, container markings are becoming increasingly important.

In addition, product identification and origination becomes increasingly important as more and more sweet cherries are shipped greater distances nationally and to foreign markets. Testimony indicated that many handlers currently mark their containers to meet customer needs. However, uniform marking requirements would eliminate confusion and ensure to customers that they are receiving the products ordered. Testimony indicated that marking requirements that may be recommended by the Committee are weights, growing areas and State of origin.

For these reasons, the Committee believes that it is becoming more important to denote product origination and varieties on packaging. Testimony indicated that containers may need to be marked more precisely in the future than just stating ''sweet cherries.'' Uniform marking requirements would provide additional consistency in product identification. This proposal is intended to provide that authority.

The proponents have recommended establishing the authority for marking requirements under the marketing order. However, implementation of any specific regulations would require a recommendation by the Committee for informal rulemaking. The Committee wants to keep the order language flexible enough so that the Committee could adapt and modify marking requirements with changing needs and preferences of customers.

Testimony indicated that no significant costs would be incurred if this authority were implemented because handlers already have the equipment to mark containers. Container markings are currently accomplished by handlers on an individual basis. The benefits of this proposed amendment would be in the form of uniform marking requirements for Washington sweet cherries.

Although the Committee has not developed a specific type of marking that would be recommended, adding the authority to establish marking requirements in the future is reasonable. The authority for uniform container marking requirements would further expand and complement the current container and pack requirements already being used. The Committee would discuss any recommended markings at meetings and vote on support for a marking requirement. Therefore, record evidence supports adding authority for container marking requirements to § 923.52.

Material Issue Number 5

Section 923.25 should be amended to authorize Committee nominees to qualify as a member or alternate by filing a written acceptance of willingness to serve prior to the selection.

The Committee consists of 15 members, each of whom has an alternate. Ten members are growers and five are handlers. The term of office for Committee members and alternates is two years, beginning on April 1 and ending on March 31. Members and alternates serve in such capacities for the term of office for which they were selected and qualified until their respective successors are selected and have qualified.

Currently, Committee nominations are made at the designated meetings where elections are to be held. These meetings are required to be held no later than March 1 of each year. Elected nominees for member and alternate positions are required to furnish a background statement, which is forwarded to the Secretary along with a list of nominees. After being notified of the selection by the Secretary, the members and alternates sign a written acceptance indicating their willingness to serve on the Committee.

The proposal would delete the requirement that the selected member/alternate file a written acceptance after notification of selection and combine the acceptance letter with the background statement submitted prior to the selection. The nominee would, in effect, be indicating willingness to serve on the Committee prior to being selected.

Committee Form FV–23 is the Background Statement form. This form allows the Committee and Secretary to determine a nominee's eligibility to serve on the Committee by requiring information on the nominees' experience in the sweet cherry industry. The time required to complete this form is estimated to be five minutes. When nominated, the nominee completes this form. If the nominees do not return these forms promptly, delays can occur in submitting the nominee's names to the Secretary for selection, which could have a negative impact on the seating of the Committee.

The Acceptance Letter, currently signed after selection, merely requires a signature from the person accepting the appointment. Testimony indicated that there is no advantage to waiting for this form to be signed by the selectee.

The Committee believes that combining these forms as one and requiring submission at the time of nomination would be more efficient than the current method. Testimony indicated that the nominee, in effect, indicates willingness to serve on the Committee by accepting the nomination and completing the background statement upon nomination. By combining these forms into one and requiring the information at the time of nomination, the Committee and Secretary know in advance that the nominees are willing to serve on the Committee if selected.

Testimony indicated that there is no benefit in waiting for the nominee to sign the Acceptance Letter after being selected. No negative impacts are anticipated from implementing this proposal. However, the benefits are that the nominees are only required to sign and deliver one form. In addition, the Committee could obtain all pertinent information well ahead of the time for seating of the new Committee, thereby operating more efficiently.

The Department will submit the modified form to the Office of Management and Budget (OMB) for approval. Current information collection requirements for Part 923 are approved by OMB under OMB number 0581–0133.

Accordingly, record evidence supports revising § 923.25 of the order.

Material Issue Number 6

Section 923.21 should be revised to establish a limit on the number of consecutive terms a person may serve on the Committee. Currently, the term of office of each member and alternate member of the Committee is two years. There are no provisions related to tenure in the marketing order. Members and alternates may serve on the Committee until their respective successors are selected and have qualified.

The Department believes that all marketing order programs should consider tenure requirements for committee membership as a part of any amended order process. The Department believes that this provision would increase industry participation on the Committee, provide for more diverse membership, provide the Committee with new perspectives and ideas, and increase the number of individuals in the industry with Committee experience.

Experience with other marketing order programs suggests that a period of six years would be appropriate. Since the current term of office for members and alternates is two years, the Department is proposing that no member serve more than three consecutive two-year terms or a total of six years. This proposal for a limitation on tenure would not apply to alternates. Once a member has served on the Committee for three consecutive terms, or six years, the member would sit out for one year before being eligible to serve as a member again. The member could serve as an alternate during that time.

Witnesses presented testimony in opposition to this proposal. Although the Committee agrees with the principal that outreach efforts are important, the application of tenure could be problematic. Testimony indicated that the sweet cherry producing area is rather small in comparison to other fruit and vegetable growing areas, and finding growers willing to serve on the Committee is difficult. In addition, testimony further indicated that it is counterproductive to require valuable members to step down when the current system is working well.

Regarding diversity, testimony indicated that there are few diverse individuals in the cherry industry and limiting tenure on the Committee would make it challenging to maintain a diverse Committee membership and to meet the Department's diversity goals. The Committee has difficulty getting growers involved in Committee operations. Many growers participate in the nomination meetings, but few volunteer to participate as members or alternates. The Committee finds that the industry members that do agree to serve bring knowledge and experience to the Committee that would be difficult to replace.

Testimony indicated that the Committee would continue outreach efforts to encourage diverse representation on the Committee. If the proposal is implemented, the Committee supports that tenure should not apply to alternates.

The Department believes, and experience with other marketing order committees has demonstrated, that tenure requirements for committee membership increases participation,

provides for more diverse committees, provides for different perspectives, and increases the number of industry members with Committee experience.

Therefore, record evidence supports establishing tenure requirements for the Committee.

Material Issue Number 7

Section 923.64 should be amended to require that continuance referenda be conducted every six years to ascertain industry support for the order.

Currently, there is no provision in the marketing order that provides for periodic continuance referenda.

The Department believes that producers should have an opportunity to periodically vote on whether a marketing order should continue. Continuance referenda provide an industry with a means to measure producer support for the marketing order program. Experience has shown that programs need significant industry support to operate effectively. Under this proposal, the Department would consider termination of the marketing order if less than two-thirds of those voting and less than two-thirds of the volume represented in the referendum favored continuance. This is the same as that for issuance of an order. As with tenure, experience in recent years indicates that six years is an appropriate period to allow producers an opportunity to vote for continuance of the program. Therefore, the proposal sets forth that a referendum would be conducted six years after the effective date of this amendment and every sixth year thereafter.

Witnesses presented testimony in opposition to this proposal. Testimony indicated that the industry currently has the ability to request a continuance referendum at any time. The Committee believes that requiring unnecessary referenda is costly and of little value to the industry or the Department. The program has worked successfully since 1957 and growers have not been against any major aspects of the order since that time.

Testimony also indicated that requiring a continuance referendum every six years would further impede participation on the Committee. Based on record evidence, many industry members believed that the process for conducting continuance referenda is similar to the marketing order amendment process, in that a hearing would be required.

Contrary to formal amendment proceedings, continuance referenda do not require a hearing. Most referenda are conducted by mail. All growers in the production area would be sent a ballot and would be asked, not required, to answer whether they support continuance of the marketing order. The growers then send the ballot back to the Department. That is the extent of grower responsibility in the continuance referenda process. The Department prepares the ballot, mails the ballots and tallies and publishes the results. The Committee office does assist the Department in this process by providing a list of growers eligible to vote in the referendum.

The Department believes that producers should have an opportunity to periodically vote on whether the marketing order should continue.

Accordingly, the record evidence supports adding a requirement that such referenda be conducted.

The Agricultural Marketing Service also proposed to make such changes as may be necessary to the order to conform with any amendment that may result from the hearing. The Department has identified no necessary conforming changes.

Small Business Considerations

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the 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 so that small businesses will not be unduly or disproportionately burdened. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $500,000. Small agricultural service firms, which include handlers regulated under the order, are defined as those with annual receipts of less than $5,000,000.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments on small businesses. The record indicates that growers and handlers would not be burdened by any additional regulatory requirements, including those pertaining to reporting and recordkeeping as a result of these proposed amendments.

Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

The record indicates that there are approximately 75 handlers currently regulated under Marketing Order No. 923. There are two additional packing houses in the proposed production area that would be considered handlers if the production area is expanded. There are four packing operations in Oregon that pack Washington cherries for grower/handlers. In addition, there are approximately 1,400 cherry growers in the current production area. There would be approximately 200 additional growers if the production area is expanded as proposed.

In 1998, Washington produced 96,000 tons of sweet cherries. The average price for fresh cherries in 1998 was $1,600 per ton. This computes to approximate revenues for the 1998 crop of $153,600,000. The record indicated that approximately 15 handlers handle the majority of the crop and could be classified as large businesses. Thus, a majority of sweet cherry handlers could be classified as small entities. The same is estimated with regard to the packing houses in Oregon.

Dividing total production from 1998 by the number of growers in the proposed production area, the average grower produces about 60 tons of cherries annually. With an average price of $1,600 per ton for 1998 sweet cherries, average revenues would be $96,000. Thus, it is reasonable to conclude that most sweet cherry growers are small entities.

Industry Background

Sweet cherries rank second to apples as the most important fruit grown in Washington, with a value of production of $128.7 million. Washington growers produced 96,000 tons of sweet cherries in 1998, which is 46 percent of the nation's total.

The varieties of sweet cherries subject to regulation under the order are: Bing, Chelan, Lambert, Lapin, Rainier, and Sweetheart. Shipping of these cherries generally begins around June 15 and usually ends around August 15. The most active harvest period is from June 10 through July 20.

The order authorizes the use of grade, size and container regulations for the fresh shipment of sweet cherries from the production area. The regulations, specify certain size, maturity and pack requirements. The current regulations are based on Washington grade standards and apply to specific varieties. The purpose of these regulations is to ensure the shipment of high quality cherries. The order has allowed the industry to develop the reputation for shipping a quality product, which has allowed producers to ship and sell fruit in a more stable marketplace.

Washington is the leading producer of sweet cherries for fresh market sale. Washington's main competitors in domestic fresh markets are California and Oregon. From 1994 through 1998, Washington produced an average of 55,600 tons per year. This represents 59 percent of the total sweet cherries marketed fresh. California produced an average of 20,460 tons per year and Oregon produced 12,900 tons per year from 1994 through 1998.

Sweet cherries are also grown in Idaho, Montana and Utah, as well as Michigan, New York and Pennsylvania. Bearing acreage figures are not published for the States of Idaho and Montana. Utah's production area totals 600 acres, and has been declining. Bearing acreage figures are published for Michigan, New York and Pennsylvania, but the majority of sweet cherries grown in those states are not sold in fresh markets. The fruit in these States are produced and marketed during the summer months each year. While these States compete with Washington, Oregon and California in the marketing of fresh sweet cherries, their production is relatively small.

From 1964 through 1998, total U.S. production of sweet cherries increased 332 percent and fresh utilization increased 393 percent. This suggests that fresh shipments have been growing in importance, while the processing sector has remained relatively stable. Over the past five seasons, 66 percent of Washington's production moved into fresh markets.

Over the last 30 years, prices between the three primary growing States have been very competitive. Prices in California, Washington and Oregon have averaged $1,166, $1,028 and $798 per ton, respectively. California prices are slightly higher than prices in Washington or Oregon. One of the reasons that California prices average higher than Washington's is that California shipments begin in the early part of May, when competition in the fresh fruit market is limited. Washington shipments do not start until the middle of June. Early-season shippers generally receive a premium for their product on the fresh market.

Fresh prices for Washington sweet cherries receive a premium over processing sweet cherries. From 1969 to 1998, fresh prices have increased more than 350 percent. Fresh cherry prices were $350 per ton in 1969 and were as high as $2,150 per ton in 1996. Prices were $1,600 per ton in 1998.

While California growers receive higher prices than Washington growers on average, Washington's value of production is much greater than California's or Oregon's. This is due to higher yields and larger production levels in Washington. This likely indicates that Washington growers have a comparative cost advantage over California or Oregon growers. In 1998, Washington reported its highest value of fresh production, $113.6 million. This compares to a 1998 value of fresh production of $17.9 million for California and $22.6 million for Oregon. The value of fresh production has increased more than 150 percent since 1991.

Exports play an important role in the marketing of Washington sweet cherries. With increasing bearing acres and production levels trending toward 100,000 tons in the near future, increasing levels of exports can be anticipated. However, competition in the export markets is expected to be high. California continues to export a large volume of their increasing production. In addition, China is estimated to have 25,000 acres of cherries planted. Spain, Greece, Turkey, Iran, Lebanon, Syria and some Eastern European countries have also increased production levels. These countries do not import sweet cherries into the U.S.

Exports of fresh Washington sweet cherries have been increasing, in particular during the 1997 and 1998 seasons. Exports reached a high of 21,148 tons in 1997. In 1998, exports increased 35 percent over the 1997 levels, achieving a new high of 28,560 tons.

Export markets demand a high quality product. With a limited shelf life, these fresh deliveries of sweet cherries require a high quality product. The shipment of low quality product could ruin years of market development in an export market. Grades and standards assure the shipment of high quality fruit into export markets, and small growers as well as large growers will benefit.

Production Area and Shipments Outside Production Area

When the marketing order was created in 1957, sweet cherries were primarily grown in only 6 counties in the State of Washington. The 6 counties that are currently regulated are Okanogan, Chelan, Douglas, Grant, Benton, and Yakima. The 14 additional counties proposed for inclusion are Kittitas, Klickitat, Ferry, Stevens, Pend Oreille, Lincoln, Spokane, Adams, Whitman, Franklin, Walla Walla, Columbia, Garfield, and Asotin.

Cherry production has dramatically increased in areas within the State of Washington that are outside the current production area. As more land has come into irrigation and farmers look for alternative crops to grow, sweet cherry production is expected to increase in areas outside the current production area.

The proposed amendment to increase the production area to cover the area in the State of Washington east of the Cascade Mountain Range, to redefine the districts in order to include the additional counties and to authorize special purpose shipments, with appropriate safeguards, allowing movement of cherries to packing operations outside the production area would improve the effectiveness of the marketing order by ensuring that the major cherry producing counties in Washington are covered under the marketing order. In addition, including counties with potential to produce significant amounts of sweet cherries would ensure that all major production would be covered under the marketing order in the future. The proposed amendment would also benefit growers, especially growers not currently regulated under the order, by allowing many of these growers to continue shipping their cherries to Oregon for packing.

The Committee has been discussing amending the order in this regard for many years. In 1990, a subcommittee composed of small and large growers and handlers was appointed to study the expansion of the production area. The Committee discussed expanding the production area with producers located outside the production area. Out of these discussions, it was determined that if the production area was expanded, the authority to grade and pack cherries outside the production area was also needed in order to allow growers in the proposed production area to avoid financial hardships by maintaining continuity in the packing of their cherries.

In March 1998, the Committee recommended numerous amendments to the marketing order, including covering the entire State of Washington in the production area. In August 1999, the Committee recommended modifying the recommendation on the production area proposal from regulating the entire State to only including the eastern part of the State.

Alternatives to the current proposal on the expansion of the production area were considered by the Committee. These alternatives were: (1) Including the entire State of Washington; (2) including the States of Washington and Oregon; and (3) including the States of Washington, Oregon, Idaho and Utah. Committee representatives communicated with growers and handlers in these regions. Public

meetings on the subject were publicized in these growing areas and interested parties were encouraged to attend. Committee members also attended grower meetings in these areas to discuss expansion of the production area.

Regarding including the entire State of Washington, the Committee determined that due to weather conditions, it would be unlikely that cherries could be commercially produced in significant amounts west of the Cascade Mountain Range in Washington. Average production in this area is 50 tons per year. Testimony indicated that excessive rain causes serious quality problems with sweet cherries, such as cracking. Generally, weather conditions in eastern Washington are more favorable for growing sweet cherries, as well as other horticultural crops.

Representatives from Idaho and Utah believed that their production and marketing could be easily distinguished and segregated from Washington and Oregon production. In addition, it was believed the Idaho and Utah sweet cherry industry was not large enough to make an impact on Washington cherries. Statistical data presented at the hearing on the volume of cherries produced in Idaho and Utah supports this belief.

Oregon's sweet cherry industry primarily borders the State of Washington, but representatives from Oregon believed their industry should be kept separate from the Washington industry. The record evidence revealed that Oregon already has two organizations that represent the interests of sweet cherry growers, the Oregon Sweet Cherry Commission and the Wasco County Fruit and Produce League. These organizations collect assessments based on cherry production. According to record testimony, the Oregon growers did not see the need to form another organization to protect their interests. In addition, testimony indicated that Oregon growers did not want to become a minor part of the Washington order.

An organization called the Northwest Cherry Growers also represents the States of Washington, Oregon, Idaho and Utah. This group is responsible for collecting assessments based on cherry tonnage and directing promotion programs for sweet cherries grown in these four states.

Based on record evidence, the Committee considered these various alternatives and concluded that the proposal it submitted on the expansion of the production area is the most reasonable alternative. The proposed production area is the smallest regional area, which is practicable, while maintaining program effectiveness.

The record revealed that the average cherry farm size in Washington ranges from 3 or 4 acres to several hundred acres. The average farm is approximately 40 acres. According to testimony, there are approximately 180 growers in the proposed production area that are larger that the average farm. Some farms in the proposed production area, particularly in Franklin County, are 50 to 200 acres. Although much of this acreage is currently non-producing, testimony indicated that the potential exists for significant production. Unlike the western part of the State where significant production is not anticipated, if those areas with significant production potential are not regulated, it could have a detrimental impact on the favorable Washington sweet cherry quality image.

Testimony was received at the hearing on the costs associated with the proposed amendments. This testimony indicated that costs associated with this proposal would be minor. The total annual cost of production for a mature orchard is $7,413.06 per acre. The current assessment of 75 cents per ton comprises less than 1 percent of total production costs. Any increase in assessments resulting from this proposed amendment would not have a significant negative financial impact on growers or handlers. Testimony indicated that the annual assessment could even be reduced due to additional cherries being assessed with the expansion of the production area.

Applying grades and standards to the new production areas should provide benefits to small producers. The grades and standards allow small producers the opportunity to develop a reputation for producing and delivering a consistent, high quality product. These grades and standards provide incentives and rewards for the production of high quality product. In addition, the establishment of uniform grades and standards across all the production areas provides a level field for competition among both small and large growers. Testimony indicated that as production increases, quality issues become more important and production is expected to increase in excess of 100,000 tons for the first time in the industry's history.

The 1999–2000 budget for the Committee is $62,815, of which $3,388 is earmarked for compliance efforts. Testimony indicated that increased compliance and administrative costs necessary to monitor this proposal would not be significant. It was testified that the benefits of strengthening the market would outweigh any increase in costs. Adversely, if the production area is not redefined, testimony indicated that the Washington cherry image could be harmed, as more and more areas are growing cherries. In addition, indications are that a large number of non-bearing acres are coming into production inside and outside the current production area. Adding to the increase in production are growers of other crops, such as grain and apples, looking for alternative crops to grow in order to supplement incomes. Sweet cherries are an option these growers consider.

The Washington cherry market distinguishes itself from competitors. More product is available from Washington than the other cherry producing States. The Washington cherry market is more diverse and national in scope, and testimony indicated that buyers have confidence in Washington sweet cherries due to consistent quality. Testimony revealed that this distinction is a direct result of the establishment of minimum quality requirements under the marketing order. If the proposal to allow cherry shipments outside the production area for packing is implemented there are safeguards in place to ensure that minimum quality requirements are met. If these facilities fail to abide by the applicable requirements, the committee can rescind their privileges and Washington cherries could not be delivered to that facility.

When regulations are in place, all cherries in the production area are required to be inspected and certified as meeting established requirements. The Washington State Department of Agriculture's Fruit and Vegetable Inspection Program (WSDA), headquartered in Olympia, Washington collaborates with USDA–AMS, Fresh Products Branch to provide inspection to marketing order commodities in Washington. WSDA's district offices are located in Yakima, Wenatchee and Moses Lake. These main district offices have area offices in strategic locations to the various growing areas in the State. WSDA employs approximately 150–160 full-time inspection staff throughout the State. In addition, during peak harvest periods, temporary inspectors are hired.

The WSDA operates on a user-fee basis; no appropriated funds are received. Inspection fees pay for the program to operate. Except for random inspections conducted on fruit stands to comply with a cherry fruit fly quarantine program, WSDA provides inspections only upon request. The applicant indicates to WSDA what type

of inspection is needed, such as compliance with a marketing order.

The fees for cherry inspections are 21 cents per hundred weight or $23/hour, whichever is greater, plus additional charges for travel time and mileage. The larger growers have individual inspectors stationed at their warehouses during the season. The time and mileage charges are more frequently assessed to the smaller grower/packer because of the small volumes inspected and remote locations. However, WSDA attempts to mitigate costs, especially to small growers and handlers. WSDA helps smaller growers mitigate these costs by meeting growers halfway between their orchard and the inspection office or WSDA authorizes the grower to bring the product to the inspection office.

Individual shipments not exceeding 100 pounds in the aggregate are exempt from the regulations, as well as cherries for home use and cherries not intended for re-sale. In addition, shipments for consumption by charitable institutions, for distribution by relief agencies or for commercial processing into products are exempt from regulation.

Testimony indicated that increased costs associated with more cherries being inspected in accordance with marketing order requirements would be offset by consistent quality and a stable market place. In addition, most handlers already pack their cherries and have them inspected in accordance with marketing order requirements, regardless of whether the cherries are grown inside or outside the current production area.

Minimum quality and size standards in the proposed production area would maintain the integrity of the product so that the commodity's overall quality image is not diminished by a low quality sample. The principle objective of a grading system is to make the market work more efficiently. Minimum quality and size requirements would improve information between buyers and sellers. Contracts could be made based on grade specifications, and buyers need not personally inspect each lot of product. Standardization of quality and size reduces uncertainty between buyers and sellers, and this helps reduce marketing costs. The goal of an effective grading system is to improve quality and size. Minimum quality and size standards would help ensure that substandard produce does not find its way to the market and destroy consumer confidence and harm producer returns. Cherries that do not meet the grade and size requirements can be sold in the processed market.

In addition to proximity to their orchards, there are other reasons growers select certain packinghouses. Many growers select handlers based on the quality of pack, the packinghouse image and/or whether or not the handler is a cooperative. These options for growers would be limited if they were no longer able to have their cherries packed in Oregon.

Testimony indicated that existing packing facilities in the State of Washington could have difficulty handling the volume of Washington cherries if the production continues to increase. The proposal to allow shipments of Washington cherries outside the production area for packing would specifically address this issue. This proposal would provide flexibility in moving product in and out of the marketing order production area.

WSDA currently has an agreement with the Oregon Department of Agriculture covering the border area between both states, namely in the Bingen, Washington area, where Oregon Department of Agriculture conducts the inspections to Washington standards and marketing order specifications. Testimony indicated this agreement works well, as it assists the WSDA in supplying quality inspections in that area. Testimony indicated that the inspection office does not envision any oversight burden imposed by these proposals that it cannot meet. Safeguard provisions are incorporated into this proposal to ensure compliance with the proposal to authorize shipments outside the production area.

If the production area is expanded, it would be necessary to incorporate the additional counties regulated into the districts currently established under the order. The Committee discussed dividing the production area into three districts and distributing the counties and membership across these districts. The Committee was concerned that this would entail increasing Committee membership by more than one handler member as proposed and discussed in Material Issue No. 2. The record indicated that the Committee believed a 16 member Committee would be the most effective. Therefore, it was decided to distribute the counties proportionately among the two districts.

The proposed District 1 encompasses the northern part of the production area and District 2 encompasses the southern part. In 1997 production in proposed District 1 was approximately 44,300 tons of sweet cherries and in proposed District 2, 45,500 tons. In addition, tons packed in each proposed district is close to equal. This distribution of counties among the two districts would provide for equal representation of handlers and growers from each district.

Committee Representation

The proposed amendment to increase representation on the Committee by adding one additional handler member would improve representation on the Committee and allow the Committee to function more efficiently.

Record evidence supports increasing the membership on the Committee by one handler member. The Washington sweet cherry industry is growing. Bearing acres and production are increasing and markets, including exports, are expanding. Although the Committee's recommendation to increase the number of Committee members by one initially related to the expansion of the production area, the record testimony revealed that the Committee would prefer to have an additional handler member even if the production area is not expanded.

Increasing representation on the Committee would allow additional input in Committee decisions. Having equal handler representation for each district is reasonable considering that the volume handled is similar in each district, regardless if the production area is expanded. Costs of adding an additional member to the Committee would be minimal.

In its deliberations, the Committee discussed alternatives to address appropriate representation and districting should the production area be expanded. One alternative was to divide the area into three districts and distribute membership proportionately across these districts. This alternative would have likely entailed increasing membership by more than one. The Committee was concerned that increasing the number of members by more than one would hinder the decision-making capability of the Committee. The Committee agreed that 16 members was an appropriate number for the Committee to be most effective while adequately representing the expanded production area.

Late Payment and Interest Charges on Delinquent Assessments

The proposed amendment to authorize the Committee, with AMS approval, to collect late payment and interest charges on delinquent assessments would encourage handlers to pay their assessments on time. Assessments not paid promptly add an undue burden on the Committee because the Committee has ongoing projects and programs funded by assessments that are functioning throughout the year. The addition of such a charge is consistent with standard business practices. No costs

would be associated for handlers who pay timely assessments.

Late payment and interest charges for delinquent assessments would provide an incentive for handlers to pay on time. This would result in fewer funds needed by the Committee for collection activities. Also, the fees derived from late payment and interest charges would partially compensate the Committee for its collection efforts.

Container Marking Requirements

The proposed amendment to authorize the Committee, with AMS approval, to establish container marking requirements would further expand and enhance the current container and pack requirements already being used. Uniform marking requirements would assist in avoiding confusion in the marketplace.

Testimony indicated that no significant costs would be incurred if this authority were implemented because handlers already have the equipment to mark containers. Container markings are currently accomplished by handlers, on an individual basis. The benefits of this proposed amendment would be in the form of uniform marking requirements for Washington sweet cherries.

Combining Forms Required by Committee Nominees

The proposed amendment to authorize Committee nominees to qualify as a member or alternate by filing a written acceptance of willingness to serve prior to the selection would allow the selection process to take place in a more timely fashion.

The proposal would delete the requirement that the selected member/alternate file a written acceptance after notification of selection and combine the acceptance letter with the background statement submitted prior to selection. The nominee would, in effect, be indicating willingness to serve on the Committee prior to being selected.

Testimony indicated that there is no benefit in waiting for the nominee to sign the acceptance letter after being selected. No negative impacts are anticipated from implementing this proposal. However, the benefits are that the nominees are only required to sign and deliver one form. In addition, the Committee could obtain all pertinent information well ahead of the time for seating of the new Committee, thereby operating more efficiently.

Committee Tenure Requirements

The proposed amendment to add tenure requirements for Committee members would allow more persons the opportunity to serve as members on the Committee. It would provide for more diverse membership, provide the Committee with new perspectives and ideas, and increase the number of individuals in the industry with Committee experience. It is anticipated that this proposed amendment would not increase costs to small businesses.

Continuance Referenda

The proposed amendment to require that continuance referenda be conducted on a periodic basis to ascertain industry support for the order would allow growers the opportunity to vote on whether to continue the operation of the marketing order. Although this proposed amendment may generate minimal Committee costs to assist in conducting the referenda, there are no additional costs anticipated for small businesses.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 35), the reporting and recordkeeping provisions that would be generated by the proposed amendments would be submitted to the Office of Management and Budget (OMB). Specifically, if the production area is expanded, the overall burden of completion of all Committee generated forms and reports could increase due to additional handlers being regulated, as well as additional growers in the regulated area. Current total burden hours are approximately 69 hours and only relate to referenda and nominations. Sixty eight of these hours relate to producer referenda. The other hour covers time spent by Committee members and alternates completing membership forms. Adding an additional 200 growers would increase the overall burden for referenda documentation by approximately one hour. Adding an additional handler member would increase the overall burden to complete nomination forms from 1.25 hours to 1.33 hours. The documentation required to implement the safeguard provisions for the four packing facilities in Oregon are yet to be established, but it is not anticipated that the overall burden would be dramatically increased. It is anticipated an application form would be developed for these packing operations. These provisions and any additional provisions modifying reporting and recordkeeping burdens that generate from these proposed amendments would not be effective until receiving OMB approval. Current information collection requirements for Part 923 are approved by OMB under OMB number 0581–0133. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. All of these amendments are designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

While the implementation of these requirements may impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of these costs may be passed on to growers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the meetings regarding these proposals as well as the hearing date were widely publicized throughout the Washington sweet cherry production area and proposed production area and all interested persons were invited to attend the meetings and the hearing and participate in Committee deliberations on all issues. All Committee meetings and the hearing were public forums and all entities, both large and small, were able to express views on these issues. The Committee itself is composed of 15 members, of whom five are handlers and ten are producers. 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 the following web site: 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.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate so that this rulemaking may be completed prior to the 2001 season which begins April 1, 2001. All written exceptions timely received will be considered and a grower referendum will be conducted before these proposals are implemented.

Civil Justice Reform

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the amendments.

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 date of the entry of the ruling.

General Findings

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing agreement and order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(1) The marketing agreement and order, as hereby proposed to be amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as hereby proposed to be amended, regulate the handling of sweet cherries grown in the production area in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

(3) The marketing agreement and order, as hereby proposed to be amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act; and

(4) All handling of sweet cherries grown in the production area as defined in the marketing agreement and order, as hereby proposed to be amended, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

List of Subjects in 7 CFR Part 923

Marketing agreements, Cherries, Reporting and recordkeeping requirements.

Recommended Amendment of the Marketing Agreement and Order

For the reasons set out in the preamble, 7 CFR part 923 is proposed to be amended as follows:

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

1. The authority citation for 7 CFR part 923 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Revise § 923.4 to read as follows:

§ 923.4 Production area.

Production area means the counties of Okanogan, Chelan, Kittitas, Yakima, Klickitat in the State of Washington and all of the counties in Washington lying east thereof.

3. Amend § 923.14 by revising paragraphs (a) and (b) to read as follows:

§ 923.14 District.

* * * * *

(a) *District 1* shall include the Counties of Chelan, Okanogan, Douglas, Grant, Lincoln, Spokane, Pend Oreille, Stevens, and Ferry.

(b) *District 2* shall include the counties of Kittitas, Yakima, Klickitat, Benton, Adams, Franklin, Walla Walla, Whitman, Columbia, Garfield and Asotin.

§ 923.20 [Amended]

4. Amend § 923.20 as follows:

a. In the first sentence remove the word ''fifteen'' and add the word ''sixteen'' in its place;

b. In the third and fourth sentences remove the word ''five'' and add the word ''six'' in its place;

c. In the fifth sentence, remove the words ''four'' and ''six'' and add the word ''five'' in their place; and

d. In the sixth sentence, remove the word ''two'' and add the word ''three'' in its place.

5. Revise § 923.21 to read as follows:

§ 923.21 Term of office.

The term of office of each member and alternate member of the committee shall be for two years beginning April 1 and ending March 31. Members and alternate members shall serve in such capacities for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified. Committee members shall not serve more than three consecutive terms. Members who have served for three consecutive terms must leave the committee for at least one year before becoming eligible to serve again.

6. Revise § 923.25 to read as follows:

§ 923.25 Acceptance.

Any person prior to selection as a member or an alternate member of the committee shall qualify by filing with the Secretary a written acceptance of willingness to serve on the committee.

7. Amend § 923.41 by adding a new paragraph (c) to read as follows:

§ 923.41 Assessments.

* * * * *

(c) If a handler does not pay any assessment within the time prescribed by the committee, the assessment may be subject to an interest or late payment charge, or both, as may be established by the Secretary as recommended by the committee.

§ 923.52 [Amended]

8. In § 923.52, paragraph (a)(3) is amended by adding the word ''markings,'' after the word ''dimensions,''.

9. Amend § 923.54 as follows

a. Remove the words ''(including shipments to facilitate the conduct of marketing research and development projects established pursuant to § 923.45),'' in paragraph (b) and add a new sentence at the end of the section; and

b. Add a new sentence at the end of paragraph (c) to read as follows:

§ 923.54 Special purpose shipments.

* * * * *

(b) * * * Specified purposes under this section may include shipments of cherries for grading or packing to specified locations outside the production area and shipments to facilitate the conduct of marketing research and development projects established pursuant to § 923.45.

(c) * * * The committee may rescind or deny to any packing facility the special purpose shipment certificate if proof satisfactory to the committee is obtained that cherries shipped for the purpose stated in this section were

handled contrary to the provisions of this section.

10. Amend § 923.64 by adding a new sentence at the beginning of paragraph (c) to read as follows:

§ 923.64 Termination.

* * * * *

(c) The Secretary shall conduct a referendum six years after the effective date of this paragraph and every sixth year thereafter to ascertain whether continuance of this part is favored by growers. * * *

* * * * *

Dated: November 2, 2000.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 00–28660 Filed 11–8–00; 8:45 am]

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Federal Register

Thursday,
November 9, 2000

Part V

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Program Announcement for the Tribal Youth Field-Initiated Research and Evaluation Program; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP)–1305]

Program Announcement for the Tribal Youth Field-Initiated Research and Evaluation Program

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of solicitation.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is requesting applications for the Tribal Youth Field-Initiated Research and Evaluation Program to conduct research and evaluation projects focusing on youth from federally recognized tribes in the areas of alcohol and substance abuse, child abuse or neglect, or indigenous approaches to juvenile justice. Research findings will inform prevention and intervention efforts with offenders, high-risk youth, or juvenile victims of crime.

DATES: Applications must be received by January 23, 2001.

ADDRESSES: All application packages should be mailed or delivered to the Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850; 301–519–5535. Faxed or e-mailed applications will not be accepted. Interested applicants can obtain the *OJJDP Application Kit* from the Juvenile Justice Clearinghouse at 800–638–8736. The *Application kit* is also available at OJJDP's Web site at *www.ojjdp.ncjrs.org/grants/about.html#kit.* (See ''Format'' in this program announcement for instructions on application standards.)

FOR FURTHER INFORMATION CONTACT: Phelan Wyrick, Research and Program Development Division, Office of Juvenile Justice and Delinquency Prevention, 202–353–9254. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION:

Purpose

The purpose of this program is to generate high-quality research and evaluation focusing on youth from federally recognized tribes [1] that will inform prevention and intervention efforts with offenders, high-risk youth, or juvenile victims of crime. Research and evaluation will be supported in the specific areas of alcohol and substance abuse, child abuse or neglect, and indigenous approaches to juvenile justice. Further, OJJDP's Tribal Youth Field-Initiated Research and Evaluation Program is intended to support the development of innovative and culturally appropriate research methods and instruments for use with tribal youth.

Authority

The Fiscal Year 2000 Consolidated Appropriations Act, November 17, 1999 (Pub. L. 106–113), authorized the Tribal Youth Program (TYP), providing $12.5 million to OJJDP to support and enhance tribal comprehensive delinquency prevention and control activities and for tribal juvenile justice system improvement. Ten percent of the funds appropriated for TYP is set aside to support program-related research, evaluation, and statistics. Of that total, $500,000 is being made available for field-initiated research and evaluation.

Background

TYP funds support a joint U.S. Department of Justice (DOJ) and U.S. Department of the Interior (DOI) Indian Country Law Enforcement Initiative. The purpose of the Initiative is to address the compelling need to improve the administration of tribal criminal and juvenile justice. OJJDP has been charged with sponsoring juvenile justice research, evaluation, and statistics in this effort.

In general, OJJDP funds research activities that derive from express congressional direction or address specified statutory priority areas. However, it is clear that many creative and important research ideas deserving support originate outside the Federal Government. The Tribal Youth Field-Initiated Research and Evaluation Program allows OJJDP to provide flexible funding for innovative and rigorous research that supports TYP and the Indian Country Law Enforcement Initiative.

At the beginning of the 21st century, the tribal population faces myriad challenges. Roughly 30 percent of all tribal members and more than 50 percent of those on reservations live below the poverty level (U.S. Census Bureau, 1993). The median age of American Indians, Eskimos, and Aleuts is estimated to be under 27 years, compared with the median age for all races, estimated at about 35 years (U.S. Census Bureau, 2000). Yet tribal youth have few opportunities for social, educational, or vocational development. Findings from the Bureau of Justice Statistics (BJS) 1999 report *American Indians and Crime* highlight several critical issues for tribal youth:

- Rates of violent victimization in every age group are higher among American Indians [2] than among all other races.
- In 1995, American Indians had the highest rate of abuse or neglect of children under age 15 of any racial or ethnic group, and they experienced the greatest increase in this rate between 1992 and 1995.
- American Indians under age 18 are arrested for alcohol-related violations at a rate twice the national average.

These findings only begin to express the difficulties faced by tribal youth and communities, yet they clearly demonstrate the need for effective prevention and intervention approaches with offenders, high-risk youth, and juvenile victims of crime. OJJDP encourages the pursuit of new avenues of inquiry and innovative approaches to the problem of tribal juvenile delinquency. Support for innovative programming for Indian tribes is a priority objective under OJJDP's Tribal Youth Program.

Goals

The goal of this field-initiated research and evaluation program is to foster original, rigorous, and scientific research focusing on tribal youth populations in one or more of the following areas: Alcohol and substance abuse, child abuse or neglect, or indigenous approaches to juvenile justice. Research under this program will have direct practical implications for improving juvenile justice policy and practice.

Objectives

- Conceptualize and investigate research questions dealing specifically with alcohol and substance abuse, child abuse or neglect, or indigenous approaches to juvenile justice for tribal youth.
- Develop data collection approaches that are both scientifically rigorous and culturally appropriate.
- Expand and validate hypotheses on juvenile delinquency as they relate to tribal youth.

[1] Federally recognized Indian tribes include Alaska Native tribal governments. Under current law (Fiscal Year 2000 Consolidated Appropriations Act), the term ''Indian tribes,'' ''tribal,'' or ''tribe(s)'' means: ''any Indian tribe, band, nation or other organized group or community, including Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act * * *, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.''

[2] The BJS report includes Alaska Natives and Aleuts under the term ''American Indian.''

• Develop knowledge that will inform new hypotheses, techniques, or approaches to improve tribal juvenile justice and delinquency prevention programming.

Program Strategy [L1]

All too frequently, studies addressing tribal juvenile justice and delinquency prevention reflect limited knowledge of local cultures and indigenous justice systems. To address this gap, the Office of Justice Programs has sought guidance from tribal practitioners and researchers around the country on such issues as tribal crime and justice research, Alaskan tribal justice policies and practices, youth gangs, and suicide among tribal youth. Research recommendations that emerged from these consultations include the following: (1) Investigators should make greater efforts to involve indigenous people in the design and implementation of their research, (2) research findings should have clear practical implications for the community in which the study was conducted and for tribal communities in general, and (3) methods of inquiry should be based on and sensitive to local customs and values.

These recommendations apply to projects funded under the Tribal Youth Field-Initiated Research and Evaluation Program. Thus, applications submitted under this program should reflect efforts to involve tribal members in the design and implementation of any research or evaluation to be conducted. Projects should use culturally appropriate methods of inquiry and should offer practical implications with relevance to both the local community and broader audiences. OJJDP expects to use the results of these projects to provide empirically based guidance regarding tribal juvenile justice and delinquency prevention policies and practices.

Tribal Support

Applicants must demonstrate that they will be able to conduct the proposed research or evaluation with appropriate tribal approval. While it is not necessary to have a tribal resolution in support of this application, such a resolution may be necessary before the project begins. Applications must include a memorandum of understanding (MOU) or letter of support from at least one tribal leader with authority related to the proposed research or program evaluation (for example, a tribal council member or a program administrator). The MOU(s) or letter(s) should be included in appendix C of the application.

Special Considerations for Program Evaluations

Funding available through this solicitation is intended to support research and program evaluation efforts only. Applications proposing program evaluations should not request funds for service delivery, program materials, facility costs, or any other programmatic expenses that are not directly related to the evaluation. Further, because of the time and difficulty involved in launching youth service programs, it is strongly recommended that evaluations address programs that are already in place and operational.

Products

Proposals should contain a description of all products that will originate from the project. At a minimum, each grantee will be required to produce a final report that provides an overview of the research project. This overview should contain the following: (1) The theory and hypotheses guiding the work, (2) a description of the research or evaluation methods, (3) a full accounting of research and evaluation results, (4) practical or policy implications of the results, and (5) recommendations for future study. Grantees should indicate in their final report how their work will contribute to defining and/or implementing best practices in the field of juvenile justice for the target population. This final report should be publishable as an OJJDP research report. Applicants are also strongly encouraged to consider submitting their results for publication in a refereed journal.

Applicants must also indicate their willingness to provide at least one additional report suitable for publication as an OJJDP Bulletin or Fact Sheet. This report generally consists of excerpts or a summary of the final report and should be completed within 60 days of the grant's closing date.

Eligibility Requirements

OJJDP invites applications from public and private agencies, organizations, institutions, federally recognized tribes, and individuals, or any combination of the above. Private, for-profit organizations must agree to waive any profit or fee. In the case of joint applications, one applicant must be clearly indicated as primary (for correspondence and award purposes) and the other(s) listed as coapplicant(s). OJJDP encourages collaborative relationships among researchers, practitioners, and tribal entities. Collaborative applications with programs currently receiving TYP funding are encouraged. If the research is of a collaborative nature, written assurances of participation from each of the collaborating entities should be provided. Similarly, when specific programs or agencies are the subject of an applicant's research or evaluation, the application should include letters of commitment or cooperation from the relevant program or agency. Applicants are encouraged to identify existing or potential funding partners for the proposed work and indicate whether the proposed project has been submitted to any other funding sources.

Selection Criteria

Applications will be evaluated and rated by a peer review panel according to the criteria outlined below. In addition, the extent to which the project narrative makes clear and logical connections among the components listed below will be considered in assessing a project's merits.

Problem(s) To Be Addressed (20 points)

The proposed research will be judged on its ability to contribute to knowledge and practice in the field of juvenile justice and delinquency prevention. Applicants must include in the project narrative a clear statement of the research questions to be addressed. Applicants should discuss how previous research supports and shapes these questions and should identify the relevance of these questions for the field of juvenile justice and for tribal youth.

Goals and Objectives (10 points)

The application must include project goals and objectives that are clearly stated and relevant to the field of juvenile justice. Goals should reflect the mission of the project and they should derive directly from the statement of problems to be addressed. Objectives should consist of clearly defined, realistic, and measurable tasks and outcomes that will enable the applicant to achieve the goals of the project. Objectives should be framed to answer the proposed research questions.

Project Design (40 points)

The application should include a detailed description of the proposed project design and research or evaluation methods. Design elements should follow directly from the project's goals and objectives. The data to be collected and/or analyzed should clearly support the project's goals and objectives. Any instruments or data to be used should be identified and discussed with regard to validity and cultural sensitivity to the target population.

The application must include a timeline that indicates when specific tasks will be initiated and completed. The timeline should be referenced as appropriate in the narrative but should be placed in appendix A of the application.

Program evaluation applications should include enough descriptive program information in this section to make the evaluation design comprehensible. However, more detailed program information may be necessary to assess the quality of the application. This should be included as necessary in appendix D.

Management and Organizational Capability (20 points)

Applicants must demonstrate that they have experience or ability related to the type of research or evaluation being proposed. This includes knowledge of juvenile justice issues specific to tribal youth and evidence of the applicant's ability to work collaboratively with tribal juvenile justice system practitioners, service providers, or tribal members. This section must include the names of responsible individuals and key consultants, their time commitments, and their major tasks. In particular, applicants must ensure that the tasks delineated in the project timeline (see ''Project Design'' above) are adequately staffed. Resumes for key staff members should be included in appendix B.

Applicants must demonstrate organizational capacity and the existence of a management structure that will support the achievement of the project's goals and objectives in an efficient and cost-effective manner. Applicants should include a description of any similar projects undertaken previously. Memorandums of cooperation or appropriate letters of support from tribal leaders must be included in appendix C.

Budget (10 points)

Applicants must provide a proposed budget that is complete, detailed, reasonable, allowable, and cost-effective in relation to the activities to be undertaken. All budgeted costs should be directly related to the achievement of project goals and objectives. A brief budget narrative should be included in this section. As stated above, the budget should not include support for service delivery or any other programmatic expenses that are unrelated to research or evaluation.

Format

Applications must include a program narrative of no more than 30 pages. The page limit does not include the budget narrative, appendixes, application forms, or assurances. At the end of the program narrative, applicants must indicate the author(s) responsible for each of the narrative sections. Appendix A should contain the project's timeline with dates for initiation and completion of critical project tasks. Appendix B should contain the resumes for the principal investigator and key staff members. Appendix C should include all necessary letters of cooperation or support. Appendix D should include any additional program descriptions necessary to assess the quality of proposed program evaluation projects.

The narrative portion of the application must be submitted on 8½-by 11-inch paper using a standard 12-point font. The application should be double spaced and printed on one side of the paper only. The narrative should be preceded by an abstract with a maximum length of 300 words.

These requirements are necessary to maintain a fair and uniform set of standards among all applicants. If the application fails to conform to these standards, it will not be eligible for consideration.

Award Period

This program will be funded for a single budget and project period not to exceed 2 years.

Award Amount

Up to $500,000 is available for this program of field-initiated research and evaluation. Individual grant amounts, which will be subject to negotiation, may range from $100,000 to $200,000 per project.

Confidentiality and Human Subjects

U.S. Department of Justice regulations require that projects involving research or statistics must maintain the confidentiality of information identifiable to a private person and that human research subjects must be protected from unreasonable risks and properly informed of the potential harms and benefits from their participation in research. Applicants must comply with the confidentiality requirements of 42 U.S.C. 3789g and 28 CFR part 22 by submitting a Privacy Certificate in accordance with 28 CFR 22.23 as part of the application package. (See appendix B, ''Privacy Certificate Guidelines and Statement,'' in the *OJJDP Application Kit.*)

If the project involves research using human subjects, the applicant must comply with Department of Justice regulations at 28 CFR part 46. This part generally requires that an Institutional Review Board (IRB) review and approve such projects unless the project is determined to be exempt from the regulatory requirements. IRB review is not required prior to submission of the application. However, if an award is made and the project involves research using human subjects, OJJDP will place a special condition on the award requiring that the project be approved by an appropriate IRB before Federal funds can be expended on activities involving human research subjects. Applicants should include plans for IRB review, where applicable, in the project timeline submitted with the proposal.

As sovereign nations, Indian tribes may have specific requirements for confidentiality and approval of research and evaluation projects. Tribal policies and procedures for reviewing and approving research apply to this program and must be met before Federal funds can be expended on activities involving human research subjects. Tribal review and approval should also be considered in the project timeline submitted with the proposal.

Catalog of Federal Domestic Assistance (CFDA) Number

The CFDA number, required on Standard Form 424, ''Application for Federal Assistance,'' is 16.731. Standard Form 424 is included in the *OJJDP Application Kit*, which can be obtained by contacting the Juvenile Justice Clearinghouse at 800–638–8736 or sending an e-mail request to puborder@ncjrs.org. The *Application Kit* is also available online at www.ojjdp.ncjrs.org/grants/about.html#kit.

Coordination of Federal Efforts

To encourage better coordination among Federal agencies in addressing State and local needs, the U.S. Department of Justice is requesting applicants to provide information on the following: (1) Active Federal grant awards supporting this project or related efforts, including other awards from the Department of Justice; (2) any pending applications for Federal funds for this or related efforts; and (3) plans for coordinating any funds described in items (1) and (2) with the funding requested in this application. For each Federal award, applicants must include the program or project title, the Federal granting agency, the amount of the award, and a brief description of its purpose.

The term ''related efforts'' is defined for these purposes as one of the following:

- Efforts for the same purpose (i.e., the proposed project would supplement,

expand, complement, or continue activities funded with other Federal grants).

- Another phase or component of the same program or project (e.g., to implement a planning effort funded by other Federal monies or to provide a substance abuse treatment or educational component within an existing juvenile justice project).
- Services of some kind (e.g., technical assistance, research, or evaluation) to the program or project described in the application.

Delivery Instructions

All application packages should be mailed or delivered to the Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850; 301–519–5535.

Note: In the lower left-hand corner of the envelope, the applicant must clearly write ''Tribal Youth Field-Initiated Research and Evaluation Program.''

Due Date

Applicants are responsible for ensuring that the original and five copies of the application package are received by 5 p.m. ET on January 23, 2001.

Contact

For further information, contact Phelan Wyrick, Program Manager, Research and Program Development Division, Office of Juvenile Justice and Delinquency Prevention, at 202–353–9254. Alternatively, e-mail inquiries can be sent to wyrickp@ojp.usdoj.gov.

References

Bureau of Justice Statistics. 1999. *American Indians and Crime.* Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

Dated: October 31, 2000.

John J. Wilson,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 00–28763 Filed 11–8–00; 8:45 am]

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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.

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- Reporting and recordkeeping requirements; published 11-9-00

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- Hazardous waste combustors
  - Clarification and technical corrections; published 11-9-00

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- Foreign participation in U.S. telecommunications market; rules and policies; published 10-10-00

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  - Radionavigation service; 31.8-32.3 GHz band removed; published 10-10-00

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  - Endosseous dental implant accessories; reclassification from Class III to Class I; published 10-10-00

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  - Electronic underwriting; published 10-10-00

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  - Montgomery GI Bill Eligibility and Entitlement; eligiblity criteria, etc.; published 11-9-00

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- Massachusetts et al.; comments due by 11-13-00; published 9-14-00

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- Plum pox compensation; comments due by 11-13-00; published 9-14-00

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- Environmental policies and procedures; comments due by 11-13-00; published 9-14-00

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- Environmental policies and procedures; comments due by 11-13-00; published 9-14-00

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- Financing policies; comments due by 11-17-00; published 9-18-00

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- Connecticut, Massachusetts, District of Columbia, and Georgia; serious ozone nonattainment areas; one-hour attainment demonstrations; correction; comments due by 11-15-00; published 11-9-00

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 468/P.L. 106–431

Saint Helena Island National Scenic Area Act (Nov. 6, 2000; 114 Stat. 1905)

H.R. 1725/P.L. 106–432

Miwaleta Park Expansion Act (Nov. 6, 2000; 114 Stat. 1908)

H.R. 3218/P.L. 106–433

Social Security Number Confidentiality Act of 2000 (Nov. 6, 2000; 114 Stat. 1910)

H.R. 3657/P.L. 106–434

To provide for the conveyance of a small parcel of public domain land in the San Bernardino National Forest in the State of California, and for other purposes. (Nov. 6, 2000; 114 Stat. 1912)

H.R. 3679/P.L. 106–435

2002 Winter Olympic Commemorative Coin Act (Nov. 6, 2000; 114 Stat. 1916)

H.R. 4315/P.L. 106–436

To designate the facility of the United States Postal Service located at 3695 Green Road in Beachwood, Ohio, as the ''Larry Small Post Office Building''. (Nov. 6, 2000; 114 Stat. 1919)

H.R. 4404/P.L. 106–437

To permit the payment of medical expenses incurred by the United States Park Police in the performance of duty to be made directly by the National Park Service, to allow for waiver and indemnification in mutual law enforcement agreements between the National Park Service and a State or political subdivision when required by State law, and for other purposes. (Nov. 6, 2000; 114 Stat. 1920)

H.R. 4450/P.L. 106–438

To designate the facility of the United States Postal Service located at 900 East Fayette Street in Baltimore, Maryland, as the ''Judge Harry Augustus Cole Post Office Building''. (Nov. 6, 2000; 114 Stat. 1922)

H.R. 4451/P.L. 106–439

To designate the facility of the United States Postal Service located at 1001 Frederick Road in Baltimore, Maryland, as the ''Frederick L. Dewberry, Jr. Post Office Building''. (Nov. 6, 2000; 114 Stat. 1923)

H.R. 4625/P.L. 106–440

To designate the facility of the United States Postal Service located at 2108 East 38th Street in Erie, Pennsylvania, as the ''Gertrude A. Barber Post Office Building''. (Nov. 6, 2000; 114 Stat. 1924)

H.R. 4786/P.L. 106–441

To designate the facility of the United States Postal Service located at 110 Postal Way in Carrollton, Georgia, as the ''Samuel P. Roberts Post Office Building''. (Nov. 6, 2000; 114 Stat. 1925)

H.R. 4957/P.L. 106–442

To amend the Omnibus Parks and Public Lands Management Act of 1996 to extend the legislative authority for the Black Patriots Foundation to establish a commemorative work. (Nov. 6, 2000; 114 Stat. 1926)

H.R. 5083/P.L. 106–443

To extend the authority of the Los Angeles Unified School District to use certain park lands in the City of South Gate, California, which were acquired with amounts provided from the land and water conservation fund, for elementary school purposes. (Nov. 6, 2000; 114 Stat. 1927)

H.R. 5157/P.L. 106–444

Freedmen's Bureau Records Preservation Act of 2000 (Nov. 6, 2000; 114 Stat. 1929)

H.R. 5273/P.L. 106–445

United States Mint Numismatic Coin Clarification Act of 2000 (Nov. 6, 2000; 114 Stat. 1931)

H.R. 5314/P.L. 106–446

To amend title 10, United States Code, to facilitate the adoption of retired military working dogs by law enforcement agencies, former handlers of these dogs, and other persons capable of caring for these dogs. (Nov. 6, 2000; 114 Stat. 1932)

S. 614/P.L. 106–447

Indian Tribal Regulatory Reform and Business Development Act of 2000 (Nov. 6, 2000; 114 Stat. 1934)

S. 2812/P.L. 106–448

To amend the Immigration and Nationality Act to provide a waiver of the oath of renunciation and allegiance for naturalization of aliens having certain disabilities. (Nov. 6, 2000; 114 Stat. 1939)

S. 3062/P.L. 106–449

To modify the date on which the Mayor of the District of Columbia submits a performance accountability plan to Congress, and for other purposes. (Nov. 6, 2000; 114 Stat. 1940)

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