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Friday
February 12, 1999

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WHEN: February 23, 1999 at 9:00 am.

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DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 868

RIN 0580–AA67

Fees for Rice Inspection

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is increasing certain fees for Federal rice inspection services performed under the Agricultural Marketing Act (AMA) of 1946. This fee increase is intended to cover, as nearly as practicable, the projected approximate 3.6 percent increase to Federal salaries for Federal Rice Inspection Services. The increase is designed to generate additional revenue required to recover operational costs created by cost-of-living increases to Federal salaries January 1, 1999.

EFFECTIVE DATE: March 1, 1999.

FOR FURTHER INFORMATION CONTACT: Sharon Vassiliades, USDA, GIPSA, ART, 1400 Independence Avenue, SW, Stop 3649, Washington, D.C. 20250–3649; telephone (202) 720–1738; electronic mail or Internet svassili@fgisdc.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be nonsignificant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. This action will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to provisions of this rule.

Regulatory Flexibility Act and Effects on Small Entities

James R. Baker, Administrator, GIPSA, has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The cost of living increase in the rice service fee is primarily applicable to GIPSA customers that produce, process, and market rice for the domestic and international markets. There are approximately 550 such customers located primarily in the Arkansas, Louisiana, and Texas geographic areas. Many of these customers meet the criteria for small business. GIPSA has determined that this rule will have a limited economic impact on small entities as defined in the Regulatory Flexibility Act.

Under the provisions of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*), rice inspection services are provided upon customer request and GIPSA must recover from the customer the cost of providing such services. GIPSA will recover the January 1, 1999, average 3.6 percent increase in Federal salary costs by raising its rice service fee. The increase will affect only that portion of the fees associated with the hourly salaries paid to Federal employees and administrative personnel; overhead costs are not included in this increase.

GIPSA cannot absorb the approximate 3.6 percent increase in salary costs with the existing deficit in retained earnings. In fiscal year 1998, GIPSA's obligations were $3,820,820 with revenue of $4,011,446, resulting in a positive margin of $190,626 and retained earnings of negative $895,584.

The increase in fees will not have a significant impact on either small or large entities. GIPSA estimates that the increased fee charged to its 550 customers will provide an annual increase of $155,356 in revenue (assuming fiscal year 1998 volume equivalents).

Information Collection and Record Keeping Requirements

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and record keeping requirements concerning applications for official inspection services including rice inspections have been previously approved by the Office of Management and Budget under control number 0580–0013.

Background

On November 25, 1998, GIPSA published in the **Federal Register** (63 FR 65134) a proposal to increase certain fees for Federal rice inspection services performed under the Agricultural Marketing Act of 1946.

The rice inspection fees were last amended on July 3, 1996 (61 FR 34714), with a tri-level fee increase with effective dates of August 2, 1996, January 1, 1997, and January 1, 1998. These fees were to cover, as nearly as practicable, the projected operating costs, including related supervisory and administrative costs and to maintain an operating reserve for Federal rice inspection services. They presently appear at 7 CFR 868.91 in Tables 1 and 2. Currently, the regular workday contract and noncontract fees are $40.20 and $48.90, respectively, while the nonregular workday contract and noncontract fees are $56.00 and $67.90, respectively. The unit rate per hundredweight for export port services is currently $ .048/cwt. and the unit rate for total oil and free fatty acid tests is currently $39.80. These unit rates are also being changed.

The increase affects only that portion of the fees associated with hourly salaries paid to Federal employees and administrative personnel; overhead recovery is not included. The fee increase generates additional revenue required to recover operational costs created by the January 1999 cost-of-living increase to Federal salaries. The average salary increase for GIPSA employees in calendar year 1999 is projected at approximately 3.6 percent. This action is being taken to ensure that the service fees charged by GIPSA generate adequate revenue to cover the additional cost created by the January 1999 Federal salary increase.

The hourly fees covered by this rule generate revenue to cover the basic

salary, benefits, and leave for those employees providing direct service delivery and administrative salaries and benefits, as well as contributing to overall overhead cost recovery. GIPSA has also identified that part of the hourly rate that is directly attributable to salaries and benefits and certain unit fees for services not performed at an applicant's facility that contain labor costs. This rule increases those hourly rates and unit fees based on an approximate 3.6 percent increase to the labor cost of each hourly rate and unit.

The amount of revenue collected under this rule will be a direct result of the work volume. GIPSA estimates an annual increase of $155,356 in revenue (assuming fiscal year 1998 volume equivalents). If GIPSA foregoes this adjustment, GIPSA will incur a net loss equivalent to the approximate 3.6 percent Federal salary increase for every hour worked by an employee providing direct service delivery and administrative personnel.

In fiscal year 1998, GIPSA's obligations were $3,820,820 with revenue of $4,011,446, resulting in a positive margin of $190,626 and retained earnings of negative $895,584. GIPSA cannot afford to absorb a $155,356 loss due to the approximate 3.6 percent increase in salary costs with the existing deficit in retained earnings. Additionally, GIPSA will continue to monitor its costs to improve operating efficiencies and adopt cost saving measures, where possible and practicable.

Comment Review

GIPSA received one comment during the 60-day comment period. The commenter, a grain trade association representing grain, feed, and processing companies, opposed the fee increase, stating that the agency is simply passing on increased costs to users of the rice inspection program without first relying on cost saving measures and improved efficiencies to offset the anticipated increase in salaries for Federal employees. The comment went on to say that the agency should look at current activities to determine where programs can be streamlined, staffing can be reduced or be made more efficient, and services can be automated as the primary method to control costs and re-build the 3-month operating reserve in the trust fund account.

GIPSA is required by the AMA to recover its costs for providing rice inspection services by establishing reasonable fees to cover their estimated costs. The 3.6 percent increase is consistent with the provisions of the AMA concerning the establishment of fees. Absorbing the average 3.6 percent salary increase is impractical considering the extremely low retained earnings of negative $895,584. Further, GIPSA has conducted numerous cost saving measures in the past few years, early retirements, field office consolidations, and reduction in travel and training. GIPSA will continue to monitor its costs to improve operating efficiencies and adopt cost saving measures, where possible and practicable.

Final Action

Section 203 of the AMA (7 U.S.C. 1622) provides for the establishment and collection of fees that are reasonable and, as nearly as practicable, cover the costs of the services rendered. These fees cover the GIPSA costs, including administrative and supervisory costs, for the performance of official services, including personnel compensation, personnel benefits, travel, rent, communications, utilities, contractual services, supplies, and equipment.

It is found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) Given the current level of the operating reserve, the fee increase should be implemented as soon as possible, and (2) the effective date coincides with the beginning of a billing cycle.

In Section 868.91, Tables 1 and 2 are revised to provide for the increases in rice inspection fees.

List of Subjects in 7 CFR Part 868

Administrative practice and procedure, Agricultural commodities.

For reasons set out in the preamble, 7 CFR Part 868 is amended as follows:

PART 868 —GENERAL REGULATIONS AND STANDARDS FOR CERTAIN AGRICULTURAL COMMODITIES

1. The authority citation for part 868 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*).

2. Section 868.91 is revised to read as follows:

§ 868.91 Fees for certain Federal rice inspection services.

The fees shown in Tables 1 and 2 apply to Federal Rice Inspection Services.

TABLE 1.—HOURLY RATES/UNIT RATE PER CWT

[Fees for Federal Rice Inspection Services]

Service [1]	Regular workday (Monday-Saturday)	Nonregular workday (Sunday-holiday)
Contract (per hour per Service representative)	$40.80	$56.80
Noncontract (per hour per Service representative) [2]	50.00	69.00
Export Port Services [2]	0.05	0.05

[1] Original and appeal inspection services include: Sampling, grading, weighing, and other services requested by the applicant when performed at the applicant's facility.

[2] Services performed at export port locations on lots at rest.

TABLE 2.—UNIT RATES

Service [1,3]	Rough rice	Brown rice for processing	Milled rice
Inspection for quality (per lot, sublot, or sample inspection)	$32.90	$28.40	$20.20
Factor analysis for any single factor (per factor):			
(a) Milling yield (per sample)	25.50	25.50	
(b) All other factors (per factor)	12.10	12.10	12.10
Total oil and free fatty acid interpretive line samples: [2]		40.00	40.00
(a) Milling degree (per set)			85.10

TABLE 2.—UNIT RATES—Continued

Service [1,3]	Rough rice	Brown rice for processing	Milled rice
(b) Parboiled light (per sample)			21.30
Extra copies of certificates (per copy)	3.00	3.00	3.00

[1] Fees apply to determinations (original or appeals) for kind, class, grade, factor analysis, equal to type, milling yield, or any other quality designation as defined in the U.S. Standards for Rice or applicable instructions, whether performed singly or combined at other than at the applicant's facility.

[2] Interpretive line samples may be purchased from the U.S. Department of Agriculture, GIPSA, FGIS, Technical Services Division, 10383 North Executive Hills Boulevard, Kansas City, Missouri 68030. Interpretive line samples also are available for examination at selected FGIS field offices. A list of field offices may be obtained from the Director, Field Management Division, USDA, GIPSA, FGIS, 1400 Independence Avenue, SW, STOP 3630, Washington, DC 20250–3630. The interpretive line samples illustrate the lower limit for milling degrees only and the color limit for the factor ''Parboiled Light'' rice.

[3] Fees for other services not referenced in Table 2 will be based on the noncontract hourly rate listed in Section 868.90, Table 1.

James R. Baker,

Administrator.

[FR Doc. 99–3338 Filed 2–11–99; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

7 CFR PART 1530

[Rin 0551–AA39]

Sugar to be Imported and Re-Exported in Refined Form or in Sugar Containing Products, or Used for the Production of Polyhydric Alcohol

AGENCY: Foreign Agricultural Service (FAS), USDA.

ACTION: Final rule.

SUMMARY: This final rule supersedes the regulation at 7 CFR part 1530, which governs the importation of world priced raw sugar and its subsequent re-export as refined sugar, or as an ingredient in sugar containing products, or its use in the production of certain polyhydric alcohols.

EFFECTIVE DATE: This final rule is effective February 12, 1999.

ADDRESSES: U.S. Department of Agriculture, Foreign Agricultural Service, Import Policies and Programs Division, 1400 Independence Avenue, SW., Stop 1021, Washington, DC 20250–1021.

FOR FURTHER INFORMATION CONTACT: Stephen Hammond, Division Director, Import Policies and Programs Division, U.S. Department of Agriculture, Foreign Agricultural Service, 1400 Independence Avenue, SW., Stop 1021, Washington, DC 20250–1021. Telephone: 202√720–2916.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866. The Administrator of the Foreign Agricultural Service (FAS) has determined that this rule is ''not economically significant.'' Therefore, except for requirements under the Paperwork Reduction Act of 1995, the rule has not been reviewed by the Office of Management and Budget. The Administrator, FAS, has determined that the provisions of this final rule will not: (1) Result in an annual effect on the economy of $100 million or more; (2) adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; or (3) regulate issues of human health, human safety, or the environment. Further, the Administrator has determined that the rule does not:

(1) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (2) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs, or the rights and obligations of recipients; or (3) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act ensures that regulatory and information requirements are tailored to the size and nature of small businesses, small organizations, and small governmental jurisdictions. This final rule will not have a significant economic impact on a substantial number of small entities. Participation in the programs is voluntary. Direct and indirect costs are small as a percentage of revenue and in terms of absolute costs. The minimal regulatory compliance requirements are scaled to impact large and small businesses equally, and the programs improve businesses' cash flow and liquidity.

National Environmental Policy Act

The Administrator has determined that this action will not have a significant effect on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this rule.

Executive Orders 12372 and 12875, and the Unfunded Mandates Reform Act (Pub. L. 104–4)

These Executive Orders and Public Law 104–4 require intergovernmental review of programs. Neither the Refined Sugar Re-Export Program, the Sugar Containing Products Re-Export Program, nor the Polyhydric Alcohol Program impose an unfunded mandate or any other requirement on State, local or Tribal governments. Further, the programs are national in scope and involve a power delegated to the United States by the Constitution. Accordingly, these programs are not subject to the provisions of either Executive Order 12372, or Executive Order 12875, or the Unfunded Mandates Reform Act, Pub. L. 104–4.

Executive Order 12612

Executive Order 12612 requires implications of ''federalism'' be considered in the development of regulations. The Administrator certifies that this final rule has been reviewed in light of Executive Order 12612 and that it is consistent with the principles, criteria, and requirements stated in sections 2 through 5 of this Executive Order. The Administrator further certifies that this rule would impose no additional cost or burden on the States, nor affect the States' abilities to discharge traditional State governmental functions.

Executive Order 12606

Executive Order 12606 requires that government action include consideration of maintaining stability and strengthening the family. The

Administrator, FAS, has determined, under the principles and criteria established in Executive Order 12606, that this rule will have no effect on the family.

Executive Order 12630

This Executive Order requires careful evaluation of governmental actions that interfere with constitutionally protected property rights. This rule does not interfere with any property rights and, therefore, does not need to be evaluated on the basis of the criteria outlined in Executive Order 12630.

Background

This final rule revises the regulations at 7 CFR part 1530, which govern the importation of world priced raw sugar and its subsequent re-export as refined sugar, or as an ingredient in sugar containing products, or its use in the production of certain polyhydric alcohols. In order to encourage public input into the revision of this regulation, USDA published a proposed rule in the **Federal Register** on August 6, 1996 (61 FR 40749) requesting public comment through October 7, 1996. USDA received comments from 21 respondents: 6 industry associations; five agents representing some 27 private entities; and the remainder, private concerns with vested interests in the outcome of the regulation review. Most of the comments focused on license limits, information reporting, time-frames for reporting, use of bonds versus civil penalties, and program definitions.

Discussion of Comments

The comments focused on twelve issue areas. The relevant section number in the final rule is included in parenthesis where applicable. The focus areas were as follows:

License Balance and Limits (§ 1530.105)

A majority of respondents spoke to the issue of license limits, with all opposed to at least some facet of the proposed changes. Many respondents spoke of an increased likelihood of market manipulation under the proposed limit changes. Other respondents suggested that the changes limited flexibility of participants to take advantage of world market conditions. Because of the lack of support from any of the respondents regarding the proposed changes in license limits, the final rule leaves the license limits currently in use unchanged for refiners and sugar containing product manufacturers, except for the inclusion of a consolidated license for sugar containing product manufacturers. Polyhydric alcohol producer license limits were made consistent with sugar containing product manufacturer license limits to further simplify the program.

Time Period Allowed to Export Sugar Imported Under Program Provisions (§ 1530.105)

Respondents were evenly split between those in favor and those opposed to lengthening the time permitted by refiners to export program sugar, from 90 days to 18 months. Those opposed expressed concerns that under an 18 month period, imported sugar could remain in the United States for as long as 3 years. These respondents made the argument that under the regulations, a refiner would have 18 months to transfer imported sugar to a manufacturer, who has 18 months to export it in sugar containing products, which could lead to market manipulation. The respondents supporting the proposed change in the upper license limit for refiners did not support the proposed reduction in the positive balance limit. As a result, FAS retained the existing license limits and export periods for refiners and for sugar containing product manufacturers. FAS also made polyhydric alcohol producer time-use requirements consistent with the limitations for sugar containing product manufacturers. However, to facilitate the elimination of redundant reporting of transfers, the length of time to report transfers was extended from 10 to 90 days.

Reporting Requirements (§ 1530.109)

A majority of the respondents welcomed the proposed changes; however, some expressed concern that FAS had actually increased the reporting burden. Some respondents suggested that FAS was not requiring enough information and not making it available to the public. In the final rule, FAS reduced the number of reporting fields for manufacturers from 14 (as proposed), to 6. This change does not, however, reduce the quantity or quality of the information used to make important tariff-rate quota decisions. FAS will provide participants the database format for reporting and/or the database software to facilitate reporting.

Some respondents suggested that the proposed reporting burden did not take into account the commercial reality of availability of certain export documentation. FAS added the Documentation Agreement, which provides program participants an opportunity to participate in the process of determining the documentation that both the licensee and the Licensing Authority will agree is sufficient to demonstrate proof of export.

Phase-in Period (§ 1530.114)

Three respondents asked that FAS either include a method for transferring existing contracts to the new system, or allow these contracts to continue to operate under the previous rule. Their reason was that refiners typically forward contract for raw sugar for period of up to 18 months, and some of these contracts could be in violation of the new rule. Program participants will be allowed to place all existing contracts under the procedures of this final rule during a period of 24 months from the effective date of the rule.

Bonding Requirements (§ 1530.107)

The majority of persons commenting on this issue favored retaining the bonding requirements as a deterrent to fraud and/or other non-compliance with the regulations. Most respondents suggested that the bonding requirement had deterred program violations. Many respondents spoke against using civil penalties as an alternative for the bond requirement. FAS retained the bonding requirements and eliminated the proposed civil penalties. In the final rule, to provide greater flexibility for participants, FAS has also provided for the use of a letter of credit as an alternative to a bond.

Impact of North American Free-Trade Agreement (§ 1530.105(h))

Most respondents on this issue expressed concerns about the impact the North American Free-Trade Agreement (NAFTA) on the importation of Mexican sugar under the rule. Several respondents requested that the provision be extended to sugar containing products exports to Mexico. The final rule allows a refiner to import Mexican raw sugar for further refining without the quantity affecting the refiner's license balance as long as the sugar is re-exported within 30 days of entry. If 30 days pass without re-export, the Licensing Authority will charge the entry against the refiner's license. The NAFTA does not contain a provision that would permit FAS to extend this provision to sugar containing products.

Definitions of Terms Relating to the Sugar Containing Products Re-export Program (§ 1530.101)

The table below lists the issues raised by the respondents, as well as FAS'' response in the final rule.

Respondent Issue	Final Rule
"Refiner" should be limited to only those firms which refine sugar.	The final rule defines a refiner as "any person . . . refines raw cane sugar . . ."
"Sugar containing products" should not be restricted to human food only. Sugar containing pet food and non-food products should be included.	The new definition is expanded to include all sugar containing products except those normally marketed by cane sugar refiners.
"Co-packer" should be expanded to include firms that duplicate the product line of the parent company, produce some items of the parent firm's product line, or produce ingredients.	A co-packer is now defined as "a person that adds value to a licensed manufacturer's product, or produces a product for export by the licensed manufacturer, but does not at any time own any of the program sugar used as an ingredient in the final product."
"Agent," "licensee," "transfer," "notice of transfer," and "export, use and quarterly report" are terms which need clarification.	These terms are clearly defined in this rule. FAS did not define "use" because of the self-explanatory nature of the word.
Include a separate definition for "export.".	The definition of export is provided in the final rule.

Polarization (§ 1530.109)

Two respondents requested that FAS include a provision to allow for polarization adjustments. The rule requires that raw sugar entering the U.S. Customs Territory be reported on a metric ton, raw value basis. The initial and final polarization, and final weight (when available) for entries of raw sugar are required in § 1530.109. Another respondent requested that the definition of white sugar as having 99.5 degree polarity should be waived for raw sugar which is imported under the Refined Sugar Re-export Program. FAS did not address the international definition of raw sugar in the final regulation.

Polyhydric Alcohol Program (§ 1530.114)

One respondent stated that the rule should contain a provision concerning how outstanding balances are to be treated at the time the final rule is effective. Since license balances will continue under the final rule, no special treatment is needed. Another respondent requested that FAS require the licensee to certify that the polyhydric alcohol will be used for non-food products only. By the FAS definition, any polyhydric alcohol, except polyhydric alcohol produced by distillation or polyhydric alcohol used as a substitute for sugar as a sweetener in human food, can be produced with program sugar. Therefore, an additional certification would be redundant.

Export of Raw Cane Sugar

One respondent requested that FAS include a provision to permit the entry of raw cane sugar (classified under subheading 1701.11.20 in the Harmonized Tariff Schedule of the United States (HTS)) if the imported sugar is to be substituted for domestically-produced raw cane sugar that has been or will be exported. The final regulation permits a refiner to import raw sugar in anticipation of exports of refined sugar or the transfer of refined sugar to sugar containing product manufacturers or polyhydric alcohol producers.

Beet Sugar

Three respondents requested that FAS include beet sugar refiners as eligible participants in the Refined Sugar Re-export Program. One respondent stated that FAS should limit participation to cane sugar refiners only. In the final regulation, FAS continued to limit participation in the Refined Sugar Re-Export Program to cane sugar refiners, because the initial purpose of the program, which was to enhance cane sugar refiners' throughput after the imposition of restrictive raw sugar quotas and subsequent tariff-rate quotas, has not changed with the implementation of this regulation.

Other Issues Related to the Sugar Containing Products Re-export Program

A respondent requested that a manufacturer of a product which is 100 percent sugar, for instance, sugar put into paste form, to which dye is added, should be able to export the product under the rule's provisions for sugar containing products. The definition of sugar containing product in the final regulation addresses this question by incorporating all sugar containing products except those normally marketed by refiners.

Another respondent requested that FAS publish a list of licensees under the Sugar Containing Products Re-export Program, and suggested that if a firm acted in good faith based upon the information contained in the list, it should not be held liable for any transactions that fell outside program limits. FAS maintains a list of program participants, but does not provide any other information about the companies on that list. Program participants are held responsible in the final rule to ensure that the program refined sugar and sugar in sugar containing products are exported from the U.S. Customs Territory.

Two other respondents requested a provision for a 5.0 percent loss allowance for refined sugar (with 100 percent polarity) used in manufacturing sugar containing products. These respondents claimed that the license balance system did not account for

sugar lost in the normal manufacturing process. Most respondents, however, did not object to the removal of the loss provision in the proposed regulation. In the final rule FAS does not provide credit for sugar lost in the manufacturing process.

FAS collapsed the regulations for the Refined Sugar Re-Export Program, the Sugar Containing Products Re-Export Program and the Polyhydric Alcohol Program into one rule.

Where possible the terms and conditions for each program were unified in order to simplify and facilitate use of the rule.

List of Subjects in 7 CFR Part 1530

Agricultural commodities, Sugar, Imports, Procedural rules, Appeal procedures, Reporting and record keeping requirements.

Final Rule

Accordingly, the regulations at 7 CFR part 1530 are revised to read as follows:

PART 1530—THE REFINED SUGAR RE-EXPORT PROGRAM, THE SUGAR CONTAINING PRODUCTS RE-EXPORT PROGRAM, AND THE POLYHYDRIC ALCOHOL PROGRAM

Sec.
1530.100 General statement.
1530.101 Definitions.
1530.102 Nature of the license.
1530.103 License eligibility.
1530.104 Application for a license.
1530.105 Terms and conditions.
1530.106 License charges and credits.
1530.107 Bond or letter of credit requirements.
1530.108 Revocation or surrender of licenses.
1530.109 Reporting.
1530.110 Records, certification, and documentation.
1530.111 Enforcement and penalties.
1530.112 Administrative appeals.
1530.113 Waivers.
1530.114 Implementation.
1530.115 Paperwork Reduction Act assigned number.

Authority: Additional U.S. note 6 to chapter 17 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202); 19 U.S.C. 3314; Proc. 6641, 58 FR 66867, 3 CFR, 1994 Comp., p. 172; Proc. 6763, 60 FR 1007, 3 CFR, 1995 Comp., p. 146.

§ 1530.100 General statement.

This part provides regulations for the Refined Sugar Re-Export Program, the Sugar Containing Products Re-Export Program, and the Polyhydric Alcohol Program. Under these provisions, refiners may enter raw sugar unrestricted by the quantitative limit established for the raw sugar tariff-rate quota or the requirements of certificates of quota eligibility provided for in 15 CFR part 2011, as long as licensees under the programs export an equivalent quantity of refined sugar, either as refined sugar or as an ingredient in sugar containing products, or use the refined sugar in the production of certain polyhydric alcohols.

§ 1530.101 Definitions.

Affiliated persons means two or more persons where one or more of said persons directly or indirectly controls or has the power to control the other(s), or, a third person controls or has the power to control the others. Indications of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, and common use of employees.

Agent means a person who represents the licensee in any program transaction. An agent shall not, at any time, own any of the product produced by the program licensee. Agents may include brokers, shippers, freight forwarders, expediters, and co-packers.

Bond or letter of credit means an insurance agreement pledging surety for the entry of foreign sugar without the required re-export within the program guidelines.

Certain polyhydric alcohols means any polyhydric alcohol, except polyhydric alcohol produced by distillation or polyhydric alcohol used as a substitute for sugar as a sweetener in human food.

Co-packer means a person who adds value to a licensed manufacturer's product, or produces a product for export by a licensed manufacturer.

Date of entry means the date raw sugar enters the U.S. Customs Territory.

Date of export means the date refined sugar or sugar containing products are exported from the U.S. Customs Territory, or, if exported to a restricted foreign trade zone, the date shown on the U.S. Customs Service form designating the product as restricted for export.

Date of transfer means the date that ownership of program sugar is conveyed from a refiner to a manufacturer or producer licensee.

Day means calendar day. When the day for complying with an obligation under this part falls on a weekend or Federal holiday, the obligation may be completed on the next business day.

Documentation agreement means a signed and notarized letter from a licensee specifying certain documentation that the licensee shall obtain and maintain on file before said licensee requests from USDA updating of a license balance.

Enter or entry means importation into the U.S. Customs Territory, or withdrawal from warehouse for consumption, as those terms are used by the U.S. Customs Service.

Export means the conveyance (shipment) of sugar or a sugar containing product from a licensee under this part to a country outside the U.S. Customs Territory, or to a restricted foreign trade zone.

Licensing Authority means a person designated by the Director, Import Policies and Programs Division, Foreign Agricultural Service, USDA.

Manufacturer means a person who produces or causes to be produced on their behalf a sugar containing product for export under the provisions of this part.

Person means any individual, partnership, corporation, association, estate, trust, or any other business enterprise or legal entity.

Program sugar means sugar that has been charged or credited to the license of a licensee in conformity with the provisions of this part.

Program transaction means an appropriate entry, transfer, use, or export of program sugar.

Refined sugar means any product that is produced by a refiner by refining raw cane sugar and that can be marketed as commercial, industrial or retail sugar.

Refiner means any person in the U.S. Customs Territory that refines raw cane sugar through affination or defecation, clarification, and further purification by absorption or crystallization.

Sugar containing product means any product, other than those products normally marketed by cane sugar refiners, that is produced from refined sugar or to which refined sugar has been added as an ingredient.

Transfer means the transfer of legal title of program sugar from a licensed refiner to a licensed manufacturer of a sugar containing product or a licensed producer of certain polyhydric alcohols for the production of sugar containing products or the production of certain polyhydric alcohols.

Unique number means a tracking number established by a licensee for a transaction (entry, transfer, export, or use). A unique number is established for a transaction to or from a specific country or licensee. The unique number is also assigned by the licensee to a file that contains all of the supporting documentation for the transaction for which it was established. The unique number is the means by which program transactions will be tracked.

§ 1530.102 Nature of the license.

(a) A person who wishes to participate in the Refined Sugar Re-export Program, the Sugar Containing Products Re-export Program, or the Polyhydric Alcohol Program must first obtain a license from the USDA, through the Licensing Authority.

(b) A license under the Refined Sugar Re-export Program permits a refiner to enter raw cane sugar under subheading 1701.11.20 of the HTS, and export an equivalent quantity of refined sugar onto the world market or transfer an equivalent quantity of refined sugar to licensees under the Sugar Containing Products Re-export Program or the Polyhydric Alcohol Program.

(c) A license under the Sugar Containing Products Re-export Program or Polyhydric Alcohol Program permits licensees to receive transfers and export an equivalent quantity of sugar as an ingredient in sugar containing products, or use an equivalent quantity of sugar in the production of certain polyhydric alcohols.

(d) All refining, manufacturing, and production shall be accomplished in the U.S. Customs Territory, and within time-frames and quantity limitations prescribed in this part. Program sugar and non-program sugar are substitutable.

(e) A licensee must establish a bond or a letter of credit in favor of the U.S. Department of Agriculture to charge program sugar in anticipation of the export or transfer of refined sugar, the export of sugar in sugar containing products, or the production of certain polyhydric alcohols.

§ 1530.103 License eligibility.

(a) A raw cane sugar refiner, a manufacturer of sugar containing products, or a producer of certain polyhydric alcohols, that owns and operates a facility within the U.S. Customs Territory, is eligible for a license to participate in the Refined Sugar Re-export Program, the Sugar Containing Products Re-export Program, or the Polyhydric Alcohol Program, respectively.

(b) No person may apply for or hold more than one license, including a license held by an affiliated person.

(c) Notwithstanding paragraph (b) of this section, a person who owns one or more wholly-owned subsidiary corporations manufacturing sugar containing products or producing certain polyhydric alcohols, which would otherwise qualify for an individual license, is eligible for a consolidated license to cover the program transactions and other program activities of both the parent corporation and the subsidiary corporation(s). The program transactions and other program activities of the subsidiary corporation(s) covered by a consolidated license shall be treated as the activities of the corporation holding the consolidated license.

(d) Notwithstanding paragraph (c) of this section, each wholly-owned subsidiary manufacturing sugar containing products or producing certain polyhydric alcohols may establish a license for program activities instead of the parent corporation establishing a consolidated license. The sum total of license limits for the parent corporation and its wholly-owned subsidiary corporation(s) shall not exceed the quantitative limits established in § 1530.105 of this part.

§ 1530.104 Application for a license.

(a) A person seeking a license shall apply in writing to the Licensing Authority and shall submit the following information:

(1) The name and address of the applicant;

(2) The address at which the applicant will maintain the records required under § 1530.110;

(3) The address(es) of the applicant's processing plant(s), including any wholly-owned subsidiary(s) and plant(s) in the case of a consolidated license, and including those of any co-packer(s);

(4) In the case of a refined sugar product, the polarity of the product and the formula proposed by the refiner for calculating the refined sugar in the product;

(5) In the case of a sugar containing product, the percentage of refined sugar (100 degree polarity), on a dry weight basis, contained in such product(s);

(6) In the case of polyhydric alcohol, the quantity of refined sugar used producing certain polyhydric alcohols; and

(7) A certification explaining that the applicant is not affiliated with any other licensee, or explaining any affiliations, should they exist.

(b) A documentation agreement must be concluded with the Licensing Authority.

(c) If any of the information required by paragraph (a) of this section changes, the licensee shall promptly apply to the Licensing Authority to amend the application to include such changes.

§ 1530.105 Terms and conditions.

(a) A licensed refiner (refiner) shall, not later than 90 days after entering a quantity of raw cane sugar under subheading 1701.11.20 of the HTS, export or transfer an equivalent quantity of refined sugar if the entry results in a positive license balance.

(b) A licensed sugar containing products manufacturer (manufacturer) or a licensed polyhydric alcohol producer (producer) shall, not later than 18 months from the date of transfer of a quantity of refined sugar from a refiner, export an equivalent quantity of refined sugar as an ingredient in a sugar containing product if the transfer results in a positive license balance, or use an equivalent quantity of refined sugar in the production of certain polyhydric alcohols if the transfer results in a positive license balance, respectively.

(c) Notwithstanding paragraphs (a) and (b) of this section, licensees may receive credit for the exportation or transfer of refined sugar, the exportation of a sugar containing product, or the production of certain polyhydric alcohols prior to the corresponding date of entry of raw cane sugar or the date of transfer of refined sugar.

(d) Licensees are encouraged to submit monthly program transaction reports, but shall report no later than 90 days from the date of entry, transfer, export, or use.

(e) A refiner may enter raw sugar, or a manufacturer or producer may receive a transfer of refined sugar, in anticipation of the transfer or export of refined sugar (refiner), the export of sugar in sugar containing products (manufacturer) or the production of a polyhydric alcohol (producer) not to exceed the value of a bond or letter of credit, which must be established pursuant to § 1530.107 of this part. The value of a bond or letter of credit shall not exceed the license limits established in this section.

(f) A refiner shall not exceed a license balance of 50,000 metric tons, raw value for the sum of all charges and credits.

(g) A refiner may enter raw sugar from Mexico and re-export, within 30 days of entry, refined sugar to Mexico without a charge against the refiner's license balance. If the refined sugar is not re-exported to Mexico within 30 days of entry, the license shall be charged the quantity that has not been re-exported.

(h) A manufacturer or a producer shall not exceed a license balance of 10,000 short tons, refined value for the sum of all charges and credits.

(i) A manufacturer's or a producer's consolidated license balance, or the sum of a parent company and wholly-owned subsidiary license balances if held separately, shall not exceed a license balance of 25,000 short tons, refined value for the sum of all charges and credits.

(j) For the purposes of the programs governed by this part, sugar is fully substitutable. The refined sugar transferred, exported, or used does not

need to be the same sugar produced by refining raw sugar entered under subheading 1701.11.20 of the HTS.

(k) A licensee may use an agent to carry out the requirements of participation in the program. The licensee must retain ownership of and responsibility for the product until exported from the U.S. Customs Territory, to a restricted foreign trade zone, or used in the production of certain polyhydric alcohols, and must establish and maintain sufficient documentation, as agreed in the documentation agreement pursuant to § 1530.110, to substantiate export of the product or the production of certain polyhydric alcohols.

(l) A license may be assigned only with the written permission of the Licensing Authority and subject to such terms and conditions as the Licensing Authority may impose.

(m) The Licensing Authority may impose such conditions, limitations or restrictions in connection with the use of a license at such time and in such manner as the Licensing Authority, at his or her discretion, determines to be necessary or appropriate to achieve the purposes of the relevant program.

§ 1530.106 License charges and credits.

(a) A license shall be charged or credited for the quantity of sugar entered, transferred, exported, or used, adjusted to a dry weight basis. Refiner quantities shall be adjusted to raw value, using the formulas set forth in paragraphs (a) (1), (2), and (3) of this section. Manufacturer and producer quantities shall be adjusted to 100 degrees polarity on a dry weight basis.

(1) To adjust the raw value for sugar with a polarization of less than 92 degrees, divide the total sugar content by 0.972 (polarization × outturn weight/.972).

(2) To adjust the raw value for sugar with polarization of 92 degrees or above, multiply the polarization times 0.0175, subtract 0.68, and multiply the difference by the outturn weight (((polarization × 0.0175) − 0.68) × outturn weight).

(3) To determine the quantity of refined sugar that must be transferred or exported to equal a corresponding quantity of entered raw sugar charged to a license, divide the quantity of entered raw sugar by 1.07 (raw quantity/1.07).

§ 1530.107 Bond or letter of credit requirements

(a) The licensee may charge program sugar in anticipation of the transfer or export of refined sugar, the export of sugar in sugar containing products, or the production of certain polyhydric alcohols, if the licensee establishes a performance bond or a letter of credit with the U.S. Department of Agriculture, which meets the criteria set forth in this section.

(b) The bond or letter of credit may cover entries made either during the period of time specified in the bond (a term bond) or for a specified entry (a single entry bond).

(c) Only the licensee who will refine the sugar, manufacture the sugar containing product, or produce certain polyhydric alcohols may be the principal on the bond or letter of credit covering such sugar to be re-exported or used in the production of certain polyhydric alcohols. The surety or sureties shall be among those listed by the Secretary of the Treasury as acceptable on Federal bonds.

(d) The obligation under the bond or letter of credit shall be made effective no later than the date of entry of the sugar for refiners or the date of transfer of the corresponding sugar for manufacture into a sugar containing product or certain polyhydric alcohols.

(e) The amount of the bond or letter of credit shall be equal to 20 cents per pound of sugar to be entered under the license.

(f) If a licensee fails to qualify for credit to a license within the specified time period of the date of export or use of corresponding sugar in an amount sufficient to offset the charge to the license for that corresponding sugar, payment shall be made to the U.S. Treasury. The payment shall be equal to the difference between the Number 11 contract price and the Number 14 contract price (New York Coffee, Sugar and Cocoa Exchange) in effect on the last market day before the date of entry of the sugar or the last market day before the end of the period during which export or use was required, whichever difference is greater. The difference shall be multiplied by the quantity of refined sugar, converted to raw value, that should have been exported in compliance with this part. If there was not a Number 11, or a Number 14 contract price for the relevant market day, the Licensing Authority may estimate such price as he or she deems appropriate.

§ 1530.108 Revocation or surrender of licenses.

(a) A license may be revoked upon written notice by the Licensing Authority.

(b) A licensee may surrender a license when the sum of all credits is equal to or greater than the sum of all charges.

§ 1530.109 Reporting.

(a) A licensee may submit as often as monthly for charges and credits against a license balance, but must submit at least a quarterly report to the Licensing Authority not later than 90 days after the earliest transaction in the report for which credits or charges are being submitted. The licensee need not report when there have not been transactions during the reporting period.

(b) Reports may be submitted by e-mail, U.S. mail, private courier, or in person, but must be in an integrated database format acceptable to the Licensing Authority. A copy of this format may be obtained from the Licensing Authority. Applicants unable to submit a report in the specified electronic format may seek a temporary waiver to permit them to submit the report on paper.

(c) The reports must include the following for all program transactions:

(1) A unique number associated with the transaction;

(2) The date of the entry, transfer (only a refiner shall report transfers to the Licensing Authority), export, or use;

(3) The quantity of program sugar entered, transferred, exported as refined sugar, or used in the production of certain polyhydric alcohols;

(4) The licensee's license number, or if a transfer is being reported, the licensee's license number as well as the transfer recipient's license number;

(5) The country of origin (entry of raw sugar) or final destination (refined exports), using the exact country code designated in the HTS; and

(6) The initial and final polarization, and final weight (when available) for entries of raw sugar.

(d) Licensees have an affirmative and continuing duty to maintain the accuracy of the information contained in previously submitted reports.

(1) The licensee shall immediately notify the Licensing Authority and promptly request that previously claimed credits be charged back upon discovery that previously claimed exports of refined sugar, refined sugar in sugar containing products, or refined sugar used in the production of polyhydric alcohol were re-entered into the U.S. Customs Territory without substantial transformation, not used in the production of certain polyhydric alcohols, made under a false underlying proof of export, or made but previously submitted exports do not otherwise satisfy the requirements of regulations or the documentation agreement.

(2) Charge backs shall be as of the date of the erroneously claimed credit.

§ 1530.110 Records, certification, and documentation.

(a) A licensee shall establish a documentation agreement with the Licensing Authority before submitting for credit against a license. The licensee shall propose to the Licensing Authority a list of documents to substantiate entries, transfers, exports, or use as appropriate. The Licensing Authority shall consider the licensee's proposal to assure that it provides that a program transaction is fully substantiated, and shall then respond in writing to the licensee in a timely fashion outlining any deficiencies. Once agreed, the licensee shall submit a notarized letter specifying the documents to be maintained on file and certifying that the charges and credits made pursuant to § 1530.106 will be kept on file, identifiable by a unique number, and available for inspection pursuant to § 1530.110.

(b) For all transactions, the documentation shall:

(1) Substantiate the information required in § 1530.109 (c), and the completion of the reported transaction;

(2) Establish the buyer and seller specifications for a transaction;

(3) Include all U.S. Customs forms submitted in the entry or export process;

(4) Provide the correct telephone numbers and addresses of any agents, consignees, foreign purchasers, and non-vessel operating common carriers used in completing the transaction;

(5) Indicate the port of entry or export for the program transaction;

(6) Provide the percentage of sugar in a sugar containing product or certain polyhydric alcohols; and

(7) Provide the name of export carrier, vessel name, and container number.

(c) The licensee shall maintain the documentation established in the documentation agreement for 5 years from the date of such program transaction.

(d) Upon request, the licensee shall make the records, outlined by the documentation agreement and identified (associated) by the unique number assigned by the licensee to the program transaction as reported to the Licensing Authority for posting against a license balance, available for inspection and copying by the Licensing Authority, the Compliance Review Staff of the Foreign Agricultural Service, and/or the Office of the Inspector General, USDA, the U.S. Department of Justice, or any U.S. Government regulatory or investigative office.

§ 1530.111 Enforcement and penalties.

(a) The Licensing Authority may revoke credits granted on a license if the credits granted do not meet the requirements set forth in the regulations of this part, or if the licensee does not voluntarily charge back credits erroneously claimed in accordance with these regulations. The Licensing Authority may also recommend revocation of a license, if the licensee has been in violation of § 1530.109 (c) of this part.

(b) The Administrator of the Foreign Agricultural Service, USDA, may suspend or revoke a license upon recommendation of the Licensing Authority. Suspension of a license will be governed by 7 CFR part 3017, subpart D and debarment will be governed by 7 CFR part 3017, subpart C.

§ 1530.112 Administrative appeals.

(a) The licensee may appeal the Licensing Authority's determination by filing a written notice of appeal, signed by the licensee or the licensee's agent, with the Director, Import Policies and Programs Division, Foreign Agricultural Service (Director), or his or her designee. The decision on such an appeal shall be made by the Director, and will be governed by § 3017.515 of this title. The appeal must be filed not later than 30 days after the date of the Licensing Authority's determination, and shall contain the licensee's written argument.

(b) The licensee may request an informal hearing. The Director shall arrange a place and time for the hearing, except that it shall be held within 30 days of the filing date of the notice of appeal if the licensee so requests.

(c) The licensee may be represented by counsel, and shall have full opportunity to present any relevant evidence, documentary or testimonial. The Director may permit other individuals to present evidence at the hearing and the licensee shall have an opportunity to question those witnesses.

(d) The licensee may request a verbatim transcript of the hearing, and shall be responsible for arranging for a professional reporter and shall pay all attendant expenses.

(e) The Director shall make the determination on appeal, and may affirm, reverse, modify or remand the Licensing Authority's determination. The Director shall notify the licensee in writing of the determination on appeal and of the basis thereof. The determination on appeal exhausts the licensee's administrative remedies.

§ 1530.113 Waivers.

Upon written application of the licensee or at the discretion of the Licensing Authority, and for good cause, the Licensing Authority may extend the period for transfer, export, or production, and/or may temporarily increase a maximum license limit, may extend the period for submitting regularly scheduled reports, or may temporarily waive or modify any other requirement imposed by this part if the Licensing Authority determines that such a waiver will not undermine the purpose of the relevant program or adversely affect domestic sugar policy objectives. The Licensing Authority may specify additional requirements or procedures in place of the requirements or procedures waived or modified.

§ 1530.114 Implementation.

Current program participants may qualify under this rule upon concluding a documentation agreement with the Licensing Authority, but must conclude a documentation agreement within 24 months of the effective date of this rule. Participant license balances, as of the effective date of this rule, shall continue under this rule.

§ 1530.115 Paperwork Reduction Act assigned number.

Licensees are not required to respond to requests for information unless the form for collecting information displays a currently valid Office of Management and Budget (OMB) control number. OMB has approved the information collection requirements contained in this part in accordance with 44 U.S.C. chapter 35. OMB number 0551–0015 has been assigned and will expire November 30, 1999.

Signed at Washington, DC on February 5, 1999.

Timothy J. Galvin,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 99–3500 Filed 2–11–99; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 11 and 135

[Docket No. 28743; SFAR 81; Amdt. No. 11–43, 135–72]

RIN 2120–AG55

Commercial Passenger-Carrying Operations in Single-Engine Aircraft Under Instrument Flight Rules; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule, published in

the **Federal Register** on May 8, 1998 (63 FR 25572). That final rule revised and clarified certain conditions and limitations in part 135 for instrument flight rule (IFR), passenger-carrying operations in single-engine aircrafts.

DATES: Effective May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Daniel Meier, 202–267–8166.

Correction of Publication

In final rule FR Doc. 98–12229, on page 25572 in the **Federal Register** issue of May 8, 1998 make the following corrections:

1. On page 25572, from the top of the heading in column 1, on line 4, insert the Special Federal Aviation Regulation (SFAR) number and the amendment numbers to read, ''SFAR 81; Amdt. Nos. 11–43, 135–72'' following the docket number.

Issued in Washington, DC on February 8, 1999.

Donald P. Byrne,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 99–3515 Filed 2–11–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, 125 and 135

[Docket No. FAA–1998–4954; Amdt. Nos. 91–257, 121–270, 125–31, 135–73]

RIN 2120–AG70

Crewmember Interference, Portable Electronic Devices, and Other Passenger Related Requirements; Correction.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, technical amendments; correction.

SUMMARY: This document contains a correction to the final rule, technical amendments, published in the **Federal Register** on January 7, 1999 (64 FR 1076). That final rule clarified that certain provisions of the current rules are applicable to passengers and others aboard the aircraft.

DATES: Effective January 7, 1999.

FOR FURTHER INFORMATION CONTACT: Carol Toth, 202–267–3073.

Correction of Publication

In final rule FR Doc. 99–58, on page 1076 in the **Federal Register** issue of January 7, 1999 make the following correction:

1. On page 1076, from the top of the heading in column 1, on line 4, insert the amendment numbers to read ''Amdt. Nos. 91–257, 121–270, 125–31, 135–73'' following the docket number.

Issued in Washington, DC on February 8, 1999.

Donald P. Byrne,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 99–3516 Filed 2–11–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 172, 173, and 184

Foods and Drugs; Technical Amendments; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of January 12, 1999 (64 FR 1758). The document amended the regulations that incorporate by reference analytical methods in the ''Food Chemical Codex'' 3d edition, by updating these references to the 4th edition. The document was published with an error. This document corrects that error.

EFFECTIVE DATE: January 12, 1999.

FOR FURTHER INFORMATION CONTACT: Silvia R. Fasce, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

SUPPLEMENTARY INFORMATION: In FR Doc. 99–563, appearing on page 1758 in the **Federal Register** of Tuesday, January 12, 1999, the following correction is made:

1. On page 1761, in the first column, in amendatory instruction ''17'', beginning in the forth line, the phrase ''number '1' '' is corrected to read ''numbers '1' and '2' ''.

Dated: February 2, 1999.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–3559 Filed 2–11–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

28 CFR Part 68

[EOIR No. 116P; A.G. Order No. 2203–99]

RIN 1125–AA17

Rules of Practice and Procedure for Administrative Hearings Before Administrative Law Judges in Cases Involving Allegations of Unlawful Employment of Aliens, Unfair Immigration-Related Employment Practices, and Document Fraud

AGENCY: Office of the Chief Administrative Hearing Officer, Executive Office for Immigration Review, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the regulations of the Office of the Chief Administrative Hearing Officer (OCAHO) pertaining to employer sanctions, unfair immigration-related employment practice cases, and immigration-related document fraud. The interim rule implements various provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and the Debt Collection Improvement Act of 1996, and makes various other changes to the OCAHO's procedural regulations.

DATES: This interim rule is effective March 15, 1999. Written comments must be submitted on or before April 13, 1999.

ADDRESSES: Please submit written comments to the Chief Administrative Hearing Officer, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2519, Falls Church, Virginia 22041. To ensure proper handling, please reference EOIR number 1125–AA17 on your correspondence. Comments are available for public inspection at the above address by calling (703) 305–0858 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Peggy Philbin, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, Virginia 22041, telephone number (703) 305–0470.

SUPPLEMENTARY INFORMATION: The IIRIRA, enacted on September 30, 1996, amends the employer sanctions, unfair immigration-related employment practices and document fraud sections of the Immigration and Nationality Act (INA) in several ways (sections 274A, 274B and 274C of the INA, respectively). The Debt Collection Improvement Act of 1996, Pub. L. No.

104–134, Title III, (''Debt Collection Improvement Act''), 110 Stat. 1321, 1321–1358 (1996), mandates that the civil penalties in each of these three sections of the INA be adjusted to reflect inflation. Finally, the OCAHO has examined its regulations and is making various changes perceived as necessary in light of case-by-case experiences since the 1991 amendments to its regulations. All of the changes to the OCAHO's regulations set forth herein are designed to make the regulations comport with one of the aforementioned statutes, clarify any existing ambiguity, and/or similarly contribute to the fair and efficient administration of sections 274A, 274B, and 274C of the INA.

Heading and Table of Contents

The interim regulation amends the heading to Part 68, the rules of practice and procedure for administrative hearings before Administrative Law Judges in the OCAHO, to include document fraud cases as well as unlawful employment of aliens cases and unfair immigration-related employment practice cases. Document fraud cases were previously addressed elsewhere in regulations, but the interim regulation includes this category of cases here because the OCAHO in fact deals with these cases in a similar procedural manner as it does with unlawful employment of aliens cases and unfair immigration-related employment cases.

The interim regulation amends the Table of Contents to include new language in the section title for § 68.33 to indicate that the section now discusses participation of parties. The interim regulation also amends the table of contents to include new sections, §§ 68.55 through 68.58. The new sections were added due to the reorganization of § 68.53 *Administrative and Judicial Review*, which was divided into four sections in order to distinguish between the various procedures for obtaining review of an order. As a result of adding new sections, § 68.54 *Filing of the official record* was renumbered and became § 68.58.

Scope of Rules

The interim regulation amends § 68.1 to utilize the official title of the Federal Rules of Civil Procedure (Rules) in stating that the Rules may be used as a guideline in any adjudicatory proceeding before the OCAHO in which a situation arises that is outside the scope of the rules laid out in this part of the Code of Federal Regulations, the Administrative Procedure Act, or any other applicable statute, executive order, or regulation.

Definitions

The interim regulation amends the definition of ''adjudicatory proceeding'' to clarify that it means an administrative proceeding before the OCAHO that commences with the filing of a complaint. This revised definition also eliminates the need for the separate definition of ''commencement of proceeding.''

The interim regulation adds definitions for ''certification'' (new paragraph (d)) and ''certify'' (new paragraph (e)), in order to provide guidance for parties who must determine their obligations under the rules and comply with them. The interim regulation defines the former term essentially to mean a formal writing that has been signed by the person making the certification as an attestation to the truth of the content of the writing. Specific definitions are provided in individual paragraphs for the terms ''certified court reporter,'' ''certified mail'' and ''certified copy.'' The term ''certify'' in paragraph (e) is simply defined as ''the act of executing a certification.''

The interim regulation also adds definitions for ''decision,'' ''final agency order,'' ''final order'' and ''interlocutory order,'' and amends the definition of ''order'' in order to distinguish between the various actions that may be taken by and within the OCAHO. A ''decision'' refers to any finding of fact or conclusion of law by an Administrative Law Judge (ALJ) or by the Chief Administrative Hearing Officer (CAHO); an ''order'' means a determination or mandate by an ALJ, CAHO, or the Attorney General that resolves some point or directs some action in the proceeding; an ''interlocutory order'' is an order that decides some intervening matter pertaining to the cause of action and is not a final decision of the whole controversy; a ''final order'' is an order by an ALJ that disposes of a particular proceeding or a distinct portion thereof, thereby concluding the jurisdiction of the ALJ with respect to the portion referred to in the order; and a ''final agency order'' is an ALJ's final order or a CAHO's order that has not been modified, vacated, or remanded in any way within the time period set forth in the regulation, or, alternatively, an order by the Attorney General. Finally, the definition of ''issued'' is also amended to clarify that it refers to the action taken when an order becomes a final agency order.

The definitions for ''prohibition of indemnity bond cases,'' ''unfair immigration related employment practice cases,'' and ''unlawful employment cases'' are reduced to simple cross-references to the applicable statutes. It was determined that summarizing these statutory causes of action in the regulations is not essential and could conceivably lead to unnecessary litigation over perceived differences between the regulatory definition and the applicable statute itself. A similar approach was taken with regard to the definition of ''document fraud cases'' which had not previously been mentioned in the definitions section.

The interim regulation also adds or amends certain other definitions. The definition of ''entry'' is amended to clarify that it applies to all orders signed under these regulations as well as to define the term as used in section 274B(i)(1). The definition of ''entry'' is thus amended to clarify that an order is ''entered'' when it is signed by an ALJ, the CAHO, or the Attorney General. A definition for ''respondent'' is added to clarify that it means a party, other than a complainant, to an adjudicatory proceeding against whom findings may be made or who may be required to provide relief or to take remedial action. The interim regulation adds a definition for ''INA'' to clarify that this term in the regulations refers to the Immigration and Nationality Act. Finally, a definition for ''Debt Collection Improvement Act'' is added to clarify that references to that statute in the regulations refer to the Debt Collection Improvement Act of 1996.

The interim regulation renumbers the paragraphs of § 68.2 to incorporate the new entries and to keep the definitions in alphabetical order. Thus, the changes begin with paragraph (a), Adjudicatory proceeding, and end with paragraph (cc), Unfair immigration-related employment practice cases.

Conforming Amendment

The interim regulation amends § 68.3 to add the phrase ''representative of record'' at § 68.3(a)(1) and (3) as a conforming amendment, in light of the new provisions in § 68.33 *infra* outlining the parameters within which lay representatives are permitted to represent parties before the ALJs.

Service and Filing of Documents

The interim regulation amends § 68.6 to add a provision at § 68.6(c) for the filing of certain documents by facsimile only to toll a time limit. A party may only file by facsimile in response to a time limit that is imposed by statute, regulation, or order. The signed originals of such documents must be forwarded concurrently with the transmission of the facsimile. Service of

the documents on the opposing party must be made by facsimile or same-day hand delivery, or, if neither of those means is feasible, by overnight mail. The serving party must indicate the means of service on the certification of service. Also added are provisions applying the procedure outlined in § 68.6(c) to the service and filing requirements pertaining to administrative review by the CAHO set forth at § 68.54(c) and described *infra*.

Responsive Pleadings—Answer

In the first sentence of § 68.9(b), the phrase ''shall constitute a waiver'' is changed to ''may be deemed to constitute a waiver.'' This technical correction is necessary to comport with actual practice and with the last sentence of § 68.9(b), which provides that a default judgment is not automatic, but at the discretion of the ALJ.

Motion to Dismiss for Failure to State a Claim Upon Which Relief Can be Granted

The interim regulation amends § 68.10 to clarify that the ALJ may dismiss a complaint for failure to state a claim upon which relief may be granted either upon motion by the respondent or *sua sponte*. However, in the prehearing phase of a proceeding, the ALJ shall allow the complainant an opportunity to be heard before *sua sponte* dismissing a complaint in its entirety for failure to state a claim on which relief may be granted.

Consent Findings or Dismissal

The interim regulation amends § 68.14(a)(2) to provide that the ALJ may require parties to file settlement agreements with the ALJ.

Technical Corrections

The interim regulation amends § 68.18 to make the following technical corrections at § 68.18(a): (1) the word ''subsection'' is changed to the word ''paragraph,'' and (2) the phrase ''of this section'' is added to the last sentence of paragraph (a).

Depositions

The interim regulation reorganizes § 68.22 into three paragraphs: (a) *Notice*; (b) *When, how, and by whom taken*; and (c) *Motion to terminate or limit examination*. This reorganization should make it easier to locate particular information within the section.

The interim regulation also adds a new provision to paragraph (b) regarding recorded depositions. This paragraph provides that an oral deposition may be recorded by audiotape or videotape, at the discretion of the ALJ. Moreover, the costs of recording the deposition must be paid by the party taking the deposition. Either party may arrange for a transcript of the deposition to be made. Also added is a thirty (30) day time limit for witness review of any transcript or recording and a provision for witness corrections.

Motion to Compel Response to Discovery; Sanctions

The interim regulation amends § 68.23 in two ways: first, it specifies that any motion filed with an ALJ to compel either a response to a request for discovery or an inspection must be accompanied by a certification that the movant has ''conferred or attempted to confer'' with the nonmovant in a good faith effort to obtain the information or material sought to be discovered in the absence of participation by the ALJ. Second, a new paragraph (d) is added: ''Evasive or incomplete response.'' This paragraph provides that an evasive or incomplete response to discovery may be treated as a failure to respond to the discovery request, thus permitting the party seeking discovery to seek an order to compel the discovery in accordance with the rest of this section.

Use of Depositions at Hearings

The interim regulation amends § 68.24 by adding paragraph (a)(7) to allow a party to offer deposition testimony in stenographic or nonstenographic form. The party shall be required to provide a transcript of the testimony offered in nonstenographic form, a requirement that parallels the Federal Rules of Evidence.

Participation of the Parties and Representation

The interim regulation amends § 68.33 by using ''Participation of the Parties'' instead of ''Appearance'' and uses ''proceeding'' instead of ''hearing'' to make the provision clearer. References to ''counsel'' have been changed to reflect the fact that a representative in an OCAHO proceeding is not required to be an attorney. The sentence allowing representation at no expense to the government was moved to § 68.33(e). The interim regulation amends § 68.33 to allow a law student under supervision of an attorney to appear before an ALJ. In addition, the interim regulation establishes that upon a motion for substitution or withdrawal of an attorney, the ALJ shall enter a written order either granting or denying the motion.

The interim regulation also outlines the parameters within which lay representation of parties before the ALJs is permitted. An individual who is neither an attorney nor a law student and who wishes to represent a party must file a detailed written application with the ALJ demonstrating that the individual possesses the knowledge and skills essential to rendering valuable service in the proceedings. The individual must file the application within ten days from the receipt of the Notice of Hearing and Complaint by the party on whose behalf the individual is filing the application, unless the ALJ extends this time period. The ALJ may inquire as to the qualification or ability of any non-attorney to act as a representative at any time, and may issue an order denying any individual the privilege of appearing if the ALJ finds that such individual meets any of the following characteristics: does not possess the requisite qualifications to represent others; is lacking in character or integrity; has engaged in unethical or improper professional conduct; or has engaged in an act involving moral turpitude. The ALJ may not deny the privilege of appearing on the basis of the aforementioned characteristics to any person who appears on his or her own behalf, or who appears on behalf of a corporation, partnership or association of which the person is a partner or general officer. Similarly, any person who represents him or herself or any corporation, partnership or unincorporated association of which that individual is a partner or general officer need not file a written application to appear. However, such persons must file a notice of appearance as set forth in § 68.33(f). The interim regulation changes the caption and substance of § 68.33(g) to reflect the fact that lay representatives are permitted to represent parties before the ALJs and that they also may withdraw from OCAHO proceedings.

Standards of Conduct

The current OCAHO regulations require in § 68.35(a) that ''[A]ll persons appearing before an ALJ are expected to act with integrity, and in an ethical manner.'' Under § 68.35(b) of the current regulations, an ALJ may exclude from OCAHO proceedings parties, witnesses, and their representatives for, among other things, ''refusal to adhere to reasonable standards of orderly and ethical conduct [and] failure to act in good faith. * * *'' This interim rule does not endeavor to amend or amplify these general standards. However, persons seeking further guidance on the standards of conduct expected in OCAHO proceedings are encouraged to consult the Federal Bar Association

Standards of Civility in Professional Conduct (''FBA Standards''), as published in 45 *The Federal Lawyer*, No. 1 (Jan. 1998). Copies of the FBA Standards may be obtained from The Office of the Chief Administrative Hearing Officer, 5107 Leesburg Pike Suite 2519, Falls Church, Virginia 22041. A copy of the FBA Standards will also be attached to each notice of hearing served by OCAHO pursuant to 28 CFR § 68.3.

Motion for Summary Decision

The interim regulation amends § 68.38(a) to clarify that a motion for summary decision is directed to the ''complaint,'' as opposed to the ''proceeding.'' Section 68.38(c) is amended to clarify that a summary decision shall be entered if the ALJ determines that there is no genuine issue as to any material fact and that a party is entitled to summary decision. Section 68.38(d) is also amended to clarify that a summary decision may be a final order and is consistent with the changes in the definitions in § 68.2.

In Camera and Protective Orders

Section 68.42(b) is amended by deleting ''to a respondent'' and inserting ''producing'' before ''party'' to take account of situations in which a complainant may seek material sensitive to a respondent.

Final Order of the Administrative Law Judge

The interim regulation amends § 68.52 in a number of ways. First, it changes the heading from *Decision and order of the Administrative Law Judge* to *Final order of the Administrative Law Judge,* and uses the term *final order* throughout the section. This change was necessary because § 68.52 pertains to final orders and this change is consistent with the definitions provided in § 68.2. The interim regulation also adds a provision to paragraph (a) that permits an ALJ to order a copy of any proposed order submitted to the ALJ by a party to be submitted on a 3.5″ microdisk.

The interim regulation further amends § 68.52 in several ways in order to comply with the Debt Collection Improvement Act and IIRIRA. The Debt Collection Improvement Act amends the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101–410, § 5(b), 104 Stat. 890, 28 U.S.C.A. § 2461 (note), to mandate the adjustment of all civil monetary penalties assessed or enforced by Federal agencies to reflect inflation. The amounts of the adjustments are determined according to a formula set forth in the Federal Civil Penalties Inflation Adjustment Act of 1990, and incorporate a ''cost-of-living adjustment'' that is defined as:

> the percentage (if any) for each civil monetary penalty by which—
>
> (1) the Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds
>
> (2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law. *Id.* § 5(b).

The formula multiplies the current penalty amount by the appropriate cost-of-living adjustment, and then rounds that number to the nearest multiple of $10, $100, $1,000, $5,000, $10,000 or $25,000 in accordance with section 5(a) of the Federal Civil Penalties Inflation Adjustment Act of 1990. The rounded increase is then compared to a maximum penalty increase cap of ten percent (10%) of the current penalty (note that this cap only applies to the first adjustment of any civil monetary penalty). If the maximum allowable increase is lower than the rounded increase, then the maximum increase is added onto the current penalty to form the adjusted penalty. If the maximum allowable increase is greater than the rounded increase—this generally occurs when the rounded increase is $0—then the rounded increase is added onto the current penalty to form the adjusted penalty.

Following this formula, the OCAHO's civil monetary penalties are adjusted as indicated in figures 1 through 3. The Debt Collection Improvement Act amended the Federal Civil Penalties Inflation Adjustment Act of 1990 to require that ''[a]ny increase under [the] Act in a civil money penalty shall apply only to violations which occur after the date the increase takes effect.'' *See* 28 U.S.C. 2461 (note). Therefore, violations occurring prior to March 15, 1999, are subject to the unadjusted penalties shown in Figures 1–3 while violations occurring on or after March 15, 1999, are subject to the adjusted penalties as set out in Figures 1–3.

FIGURE 1.—UNLAWFUL EMPLOYMENT OF ALIENS AND EMPLOYMENT VERIFICATION

Statutory and regulatory citation	Unadjusted penalty	Min./Max.	Year	CPI factor (percent)	Raw increase	Rounder	Rounded increase	10% increase	Smaller increase	Adjusted penalty
	Unlawful employment of unauthorized aliens, per person, first order								Per violation	
8 USC 1324a(e)(4)(A)(i) 28 CFR 68.52(c)(1)(i)	$250	Min.	1986	48.89	$122	$100	$100	$25	$25	$275
8 USC 1324a(e)(4)(A)(i) 28 CFR 68.52(c)(1)(i)	2,000	Max.	1986	48.89	978	1,000	1,000	200	200	2,200
	Unlawful employment of unauthorized aliens, per person, second order								Per violation	
8 USC 1324a(e)(4)(A)(ii) 28 CFR 68.52(c)(1)(ii)	2,000	Min.	1986	48.89	978	1,000	1,000	200	200	2,200
8 USC 1324a(e)(4)(A)(ii) 28 CFR 68.52(c)(1)(ii)	5,000	Max.	1986	48.89	2,444	1,000	2,000	500	500	5,500
	Unlawful employment of unauthorized aliens, per person, subsequent order								Per violation	
8 USC 1324a(e)(4)(A)(iii) 28 CFR 68.52(c)(1)(iii)	3,000	Min.	1986	48.89	1,467	1,000	1,000	300	300	3,300
8 USC 1324a(e)(4)(A)(iii) 28 CFR 68.52(c)(1)(iii)	10,000	Max.	1986	48.89	4,889	1,000	5,000	1,000	1,000	11,000
	Unlawful employment of unauthorized aliens, paperwork violations								Per violation	
8 USC 1324a(e)(5) 28 CFR 68.52(c)(5)	100	Min.	1986	48.89	49	10	50	10	10	110
8 USC 1324a(e)(5) 28 CFR 68.52(c)(5)	1,0000	Max	1986	48.89	489	100	500	100	100	1,100
	Unlawful employment of unauthorized aliens, violation/prohibition of indemnity bonds								Per violation	
8 USC 1324a(g)(2) 28 CFR 68.52(c)(7)	1,000	Max.	1986	48.89	489	100	500	100	100	1,100

FIGURE 2.—UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES

Statutory and regulatory citation	Unadjusted penalty	Min./Max.	Year	CPI factor (percent)	Raw increase	Rounder	Rounded increase	10% increase	Smaller increase	Adjusted Penalty
	Unfair immigration-related employment practices, per person, first order								Per violation	
8 USC 1324b(g)(2)(B)(iv)(I) ..... 28 CFR 68.52(d)(1)(viii)	$250	Min.	1990	25.47	$64	$100	$100	$25	$25	$275
8 USC 1324b(g)(2)(B)(iv)(I) ..... 28 CFR 68.52(d)(1)(viii)	2,000	Max.	1990	25.47	509	1,000	.....	200	200	2,200
	Unfair immigration-related employment practices, per person, second order								Per violation	
8 USC 1324b(g)(2)(B)(iv)(II) ..... 28 CFR 68.52(d)(1)(ix)	2,000	Min.	1990	25.47	509	1,000	.....	200	200	2,200
8 USC 1324b(g)(2)(B)(iv)(II) ..... 28 CFR 68.52(d)(1)(ix)	5,000	Max.	1990	25.47	1,273	1,000	1,000	500	500	5,500
	Unfair immigration-related employment practices, per person, subsequent order								Per violation	
8 USC 1324b(g)(2)(B)(iv)(III) ..... 28 CFR 68.52(d)(1)(x)	3,000	Min.	1990	25.47	764	1,000	1,000	300	300	3,300
8 USC 1324b(g)(2)(B)(iv)(III) ..... 28 CFR 68.52(d)(1)(xii)	10,000	Max.	1990	25.47	2,547	1,000	3,000	1,000	1,000	11,000
	Unfair immigration-related employment practices, document abuse								Per violation	
8 USC 1324b(g)(2)(B)(iv)(IV) ..... 28 CFR 68.52(d)(1)(xii)	100	Min.	1990	25.47	25	10	30	10	10	110
8 USC 1324b(g)(2)(B)(iv)(IV) ..... 28 CFR 68.52(d)(1)(xii)	1,000	Max.	1990	25.47	255	100	300	100	100	1,100

FIGURE 3.—CIVIL PENALTY DOCUMENT FRAUD

Statutory and regulatory citation	Unadjusted penalty	Min./Max.	Year	CPI factor (Percent)	Raw increase	Rounder	Rounded increase	10% increase	Smaller increase	Adjusted penalty
	Document fraud, first order								Per document	
8 USC 1324c(d)(3)(A) ..... 28 CFR 68.52(e)(1)(i)	$250	Min.	1990	25.47	$64	$100	$100	$25	$25	$275
8 USC1324c(d)(3)(A) ..... 28 CFR 68.52(e)(1)(i)	2,000	Max.	1990	25.47	509	1,000	.....	200	200	2,200
	Document fraud, second order								Per document	
8 USC 1324c(d)(3)(B) ..... 28 CFR 68.52(e)(1)(ii)	2,000	Min.	1990	25.47	509	1,000	.....	200	200	2,200
8 USC 1324c(d)(3)(B) ..... 28 CFR 68.52(e)(1)(ii)	5,000	Max.	1990	25.47	1,273	1,000	1,000	500	500	5,500

Following this initial adjustment, the Debt Collection Improvement Act requires that penalties be further adjusted at least every four years. The interim regulation adds new paragraphs to this section stating that the OCAHO's civil monetary penalties will be subject to inflationary adjustments at least every four years. These paragraphs are located at §§ 68.52(c)(8), 68.52(d)(2) and 68.52(e)(3).

The interim regulation also amends § 68.52 in order to conform the section to the requirements of IIRIRA. Sections 401–05 of IIRIRA require the Attorney General to conduct three pilot programs concerning employment eligibility verification. Section 402(e)(2) of IIRIRA provides that upon a determination by an ALJ that a person or entity has violated section 274A(a)(1)(A) or (a)(2) of the INA (knowingly hiring, recruiting or referring for a fee, or knowingly continuing to employ an unauthorized alien), the ALJ's order may require the respondent to participate in and comply with the terms of one of these pilot programs. The interim regulation adds paragraph (c)(2) to this section in order to reflect this requirement. Former paragraphs (c)(1)(ii) through (c)(1)(iv) are renumbered paragraphs (c)(3) through (c)(5) accordingly.

The interim regulation also adds a new paragraph (c)(6) to comport with section 403(a)(4)(C)(ii) of IIRIRA, which requires that, where a person or entity participating in one of the pilot programs has failed to provide notice of final nonconfirmation of employment eligibility of an individual to the Attorney General as required by section 403(a)(4)(C)(i) of IIRIRA, the civil monetary penalty shall be not less than $500 and not more than $1,000 for each individual with respect to whom a violation occurred. Succeeding paragraphs are renumbered accordingly.

The interim regulation adds another remedy to the list of requirements that may be included in an ALJ's order against a person or entity whom it has been determined engaged in an unfair immigration-related employment practice. As provided in section 402(e)(2) of IIRIRA, the ALJ may require the person or entity to participate in and comply with the terms of one of the pilot programs regarding employment verification set forth in sections 401–05 of IIRIRA. The required participation would be limited to the person's or entity's hiring or recruitment or referral of individuals in a state covered by such a pilot program. This provision of the interim regulation appears as paragraph (d)(1)(xi).

The heading for paragraph (c)(7) and the text for paragraph (c)(9) were altered to conform to the definition in § 68.2 (y).

In the renumbered paragraph (d)(1)(xii) of the interim regulation, an intent requirement is added to reflect an amendment to section 274B(a)(6) of the INA made by section 421(a) of IIRIRA. A person or entity may only be assessed the civil monetary penalty set forth in this paragraph if the person or entity has requested more or different documents than are required under section 274A(b) or refused to honor documents that on their face reasonably appear to be genuine for the purpose or with the intent of discriminating against an individual in violation of 274B(a)(1). Also, in paragraph (d)(3), the provision stipulating the commencement of the

period of time for which back pay may be awarded is changed from not earlier than two years prior to the filing of the complaint to not earlier than two years prior to the ''filing of a charge with the Special Counsel.'' This alteration brings the regulation into conformance with the language in the INA.

In paragraphs (e)(1)(i) through (e)(1)(iv), the interim regulation changes the language indicating how each document fraud penalty is to be applied in order to track the language of the INA as amended by section 212 of IIRIRA. Thus, the current clauses authorizing the assessment of the specified penalty for ''each document used, accepted or created and each instance of use, acceptance or creation,'' as prohibited by section 274C(a) of the INA, are replaced in the interim rule with ''each document that is the subject of a violation'' under section 274C(a). Paragraphs (e)(1)(iii) and (iv) address penalties for violations of the additional document fraud charges added to the INA by IIRIRA pertaining to the false making of documents or applications and the failure to present upon arrival at a United States port of entry a document relating to an alien's eligibility to enter the United States that had previously been presented before boarding a common carrier.

Finally, paragraph (g) states, in accordance with sections 274A(e)(7) and 274C(d)(4) of the INA, that if the CAHO does not modify, vacate, or remand the ALJ's final order and the order is not referred to the Attorney General for review (*see* discussion of § 68.55 *infra*), then the ALJ's order becomes the final agency order sixty (60) days after the date of the ALJ's order. In a case arising under section 274B of the INA, the ALJ's order becomes the final agency order on the date the order is issued.

Administrative and Judicial Review

The interim regulation makes a number of changes for purposes of clarification to former § 68.53 of the OCAHO's regulations. For clarity and greater ease of reference, § 68.53 was divided in order to address discrete topics in separate sections. Section 68.53(a)(2), addressing when the ALJ's order becomes a final agency order in the absence of review by the CAHO or the Attorney General, was relocated as a new § 68.52(g). Section 68.53(d), addressing review of an interlocutory order of an ALJ in cases arising under sections 274A and 274C of the INA, was redesignated as § 68.53. Section 68.53(a)(1), addressing administrative review of an order of an ALJ in cases arising under sections 274A and 274C of the INA was redesignated as § 68.54. Section 68.53(a)(3), addressing judicial review of a final agency order in cases arising under sections 274A and 274C of the INA, was redesignated as a new § 68.56. Section 68.53(b), addressing judicial review of the final agency order of the ALJ in cases arising under section 274B of the INA, was redesignated as a new § 68.57. Section 68.54, ''Filing of the official record,'' was renumbered accordingly as § 68.58.

The provisions of § 68.53, governing CAHO review of an interlocutory order of an ALJ in cases arising under sections 274A and 274C of the INA, have been revised to allow a party to move for CAHO review of such an order without first seeking ALJ certification of the order for review. The revision requires that such a motion for CAHO review be made within ten (10) days of the entry of the order. In addition, the current five (5) day deadline for ALJ certification of an interlocutory order has been eliminated and replaced with a requirement that the ALJ state in the order itself if interlocutory review is appropriate. The CAHO is given ten (10) days from the date of the entry of the order to determine on the CAHO's own initiative to review an interlocutory order. The standards to be used in determining if interlocutory review is appropriate have been simplified by providing that both the ALJ and the CAHO shall use the same standards to determine if interlocutory review is warranted.

The authority to stay the proceeding pending review of an interlocutory order, currently limited to the ALJ, has been extended to the CAHO as well, in keeping with the current law governing the federal court system, which permits the district judge or the court of appeals or a judge thereof to stay proceedings in district court pending an interlocutory appeal. *See* 28 U.S.C. § 1292(b). The CAHO continues to have thirty (30) days to modify or vacate an interlocutory order; however, the more systematic briefing deadlines and service requirements of § 68.54(b)–(d) *infra* are incorporated by reference.

Paragraph (d) clarifies the effect of interlocutory review. An order by the CAHO modifying or vacating an interlocutory order shall also remand the case to the ALJ. Further proceedings in the case shall be conducted consistent with the CAHO's order. Whether or not an interlocutory order is reviewed by the CAHO, all parties retain the right to request administrative review of the final order of the ALJ with respect to all issues in the case.

Although the separate step of certifying an interlocutory order for CAHO review has been eliminated in this interim rule as a streamlining measure, § 68.53 still requires that the standards governing the appropriateness of interlocutory review must be met as a threshold matter before a review of the merits of any such order can take place. This is because, under established administrative law principles, interlocutory review is disfavored and should not be readily available to the parties as a regular means of challenging interlocutory orders of the ALJ during a proceeding. Interlocutory review can be not only disruptive of the trial proceedings but can also impose a burden on the reviewing authority, which would be asked to render judgment on an interlocutory issue without the benefit of a full record below. For these reasons, § 68.53 is intended to make clear to the parties that interlocutory review is not a matter of routine and is strictly controlled by the ALJ and the CAHO.

In the title for § 68.54 (formerly § 68.53(a)), the interim regulation adds the word ''Administrative'' in front of the word ''review'' to clarify that this portion of the regulation deals with administrative—not judicial—review of orders entered by an ALJ in cases arising under sections 274A and 274C of the INA.

Throughout § 68.54 the term ''decision and order'' is changed to ''order'' or ''final order'' in order to clarify existing ambiguity and conform with the definitions in § 68.2.

Paragraph 68.54(a) discusses the CAHO's discretionary authority to review ALJs' final orders. Paragraph (a)(1) specifies that a party may file with the CAHO a written request for administrative review of an ALJ's order within ten (10) days of the entry of the ALJ's order. Paragraph (a)(2) clarifies the procedure to be used when the CAHO decides to review an order on the CAHO's own motion. The CAHO will issue a notification of review containing the issues to be reviewed within ten (10) days of the entry of the ALJ's order.

Paragraph (b) provides for written and oral arguments in cases in which administrative review has been requested or ordered. The parties may file briefs or other written statements within twenty-one (21) days of the date of entry of the ALJ's order. Paragraph (b)(2) grants the CAHO discretion to permit or require additional filings or to conduct arguments in person or telephonically. Given the thirty (30) day statutory time limit for CAHO review, it is anticipated that this discretion would be exercised sparingly.

Experience has indicated that the time limits imposed by § 68.54(a) and (b) for seeking review and filing briefs are

necessary to provide for an orderly consideration of the parties' submissions within the thirty (30) day review period specified in sections 274A(e)(7) and 274C(d)(4) of the INA.

Similarly, in light of the thirty (30) day review period, paragraph (c) requires that filing or service of all requests for review, notifications of review, briefs or other filings relating to review by the CAHO be made by facsimile or same day hand delivery, or if such filing or service cannot be made, by overnight delivery.

Paragraph (d)(1) adds an explicit provision for remand to clarify that, in addition to modification or vacation of an ALJ's order within thirty (30) days of the entry of such order, the CAHO also has the option to remand an ALJ's order back to the ALJ for further proceedings consistent with the CAHO's order. In addition, paragraph (d)(2) clarifies the procedures in the event of remand by the CAHO. Paragraph (d)(3) states that the CAHO has thirty (30) days from the date of his or her order to make any necessary technical corrections so that the CAHO may do so without having to issue a formal *erratum* order.

Paragraph (e) states that the CAHO's order becomes the final agency order thirty (30) days subsequent to the date of the CAHO's modification or vacation, unless it is referred to the Attorney General for further administrative review (*see* discussion of § 68.55 *infra*).

Section 68.55 implements section 379 of IIRIRA, which provides for Attorney General review of ALJ or CAHO final orders in cases arising under section 274A or 274C of the INA. Under paragraph (a), the CAHO shall refer to the Attorney General for review any final order which the Attorney General directs the CAHO to refer to the Attorney General within thirty (30) days of the entry of an order modifying or vacating the ALJ's final order or within sixty (60) days of the entry of the ALJ's final order if the CAHO does not modify or vacate the ALJ's final order.

Paragraph (b) provides that the CAHO will refer to the Attorney General for review any final order that the Commissioner of Immigration and Naturalization requests be referred to the Attorney General within thirty (30) days of the entry of an order modifying or vacating the ALJ's final order or within sixty (60) days of the entry of the ALJ's final order if the CAHO does not modify or vacate the ALJ's final order. Pursuant to paragraph (b)(1), the Commissioner cannot request referral of an ALJ's order to the Attorney General unless the Immigration and Naturalization Service has first sought review of that order by the CAHO. In addition, under paragraph (b)(2), the request must be in writing, must contain a succinct statement of the reasons the case should be reviewed by the Attorney General, and copies must be transmitted to all other parties to the case and to the ALJ. Under paragraph (b)(3), the Attorney General, in the exercise of the Attorney General's discretion, may accept the Commissioner's request for referral of the case for review by issuing a written notice of acceptance within sixty (60) days of the date of the request. Copies of such written notice shall be transmitted to all parties in the case and the CAHO.

Paragraph (c) provides the procedure for Attorney General review. Under paragraph (c)(1), when a case is referred to the Attorney General, all parties must have an opportunity to respond to the referral and submit briefs or other written statements. Under paragraph (c)(2), when the Attorney General directs the CAHO to refer a final order to the Attorney General or when the Commissioner of Immigration and Naturalization requests referral of a final order to the Attorney General and the Attorney General accepts that referral, then the Attorney General shall enter an order that adopts, modifies, vacates, or remands the order. Any order of the Attorney General under this provision must be in writing and be transmitted to all parties in the case and to the CAHO. No specific deadline is established for the Attorney General's review. Under paragraph (c)(3), if the Attorney General remands either the CAHO's order or the ALJ's order, further proceedings will be conducted in accordance with the Attorney General's order, and administrative review of the ALJ's or CAHO's subsequent final order will be conducted in accordance with §§ 68.54 and 68.55.

Paragraph (d)(1) clarifies that if the Attorney General does issue an adoption, modification, or a vacation, that order becomes the final agency order on the date it is entered. Paragraph (d)(2) indicates that any final order referred to the Attorney General pursuant to § 68.55(b) becomes the final agency order sixty (60) days subsequent to such referral unless the Attorney General issues a written notification of acceptance of the referral before the sixty (60) day period expires.

Miscellaneous Changes

In §§ 68.14, 68.27, 68.38, 68.42, 68.52, 68.53 and 68.54 all references to ''issue'' or ''issuance'' have been changed to ''enter'' or ''entry'' in order to comport with the amended definitions of ''entry'' and ''issue'' in § 68.2.

Good Cause Exception

The decision of the Executive Office for Immigration Review to implement this rule as an interim rule, with provision for post-promulgation public comment, is based upon the ''good cause'' exception found at 5 U.S.C. 553(d). It is necessary and proper to implement this interim rule promptly because, to a significant extent, the language of the regulation merely tracks the language of the implementing statute. Moreover, because this interim rule implements amendments to sections 274A, 274B and 274C of the INA which became effective September 30, 1996, prompt implementation is necessary to provide corresponding rules of practice and procedure for administrative hearings under 274A, 274B and 274C. Finally, these regulations do not make any substantive changes or take away rights which that established in the statute or earlier rules of practice and procedure.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant economic impact on a substantial number of small entities. No additional costs will be incurred as a result of this rule.

Executive Order 12866

The Attorney General has determined that this rule is not a significant regulatory action under Executive Order No. 12866, and accordingly this rule has

not been reviewed by the Office of Management and Budget.

Executive Order 12612

This rule has no Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order No. 12612.

Executive Order 12988

This rule complies with the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order No. 12988.

Public Comment

The Executive Office for Immigration Review invites public comments within sixty days of the publication date of these rules. In particular, any suggestions for changes that might make the Administrative Law Judge hearing process more accessible for small businesses, including the possibility of streamlined procedures, would be appreciated.

List of Subjects in 28 CFR Part 68

Administrative practices and procedure, Aliens, Citizenship and naturalization, Civil Rights, Discrimination in employment, Employment, Equal employment opportunity, Immigration, Nationality, Non-discrimination.

Accordingly, title 28, part 68 of the Code of Federal Regulations is amended as follows:

PART 68—RULES OF PRACTICE AND PROCEDURE FOR ADMINISTRATIVE HEARINGS BEFORE ADMINISTRATIVE LAW JUDGES IN CASES INVOLVING ALLEGATIONS OF UNLAWFUL EMPLOYMENT OF ALIENS, UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES, AND DOCUMENT FRAUD

1. The authority citation continues to read as follows:

Authority: 5 U.S.C. 301, 554; 8 U.S.C. 1103, 1324a, 1324b, and 1324c.

2. The heading of part 68 is revised to read as set forth in the heading above.

3. Revise §§ 68.1, 68.2, 68.3, 68.6, 68.7, 68.9, 68.10, 68.14, 68.18, 68.22, 68.23, 68.24, 68.27, 68.33, 68.38, 68.42, 68.52, 68.53, and 68.54, and add §§ 68.55 through 68.58 to read as follows:

§ 68.1 Scope of rules.

The rules of practice in this part are applicable to adjudicatory proceedings before Administrative Law Judges of the Executive Office for Immigration Review, United States Department of Justice, with regard to unlawful employment cases under section 274A of the INA, unfair immigration-related employment practice cases under section 274B of the INA, and document fraud cases under section 274C of the INA. Such proceedings shall be conducted expeditiously, and the parties shall make every effort at each stage of a proceeding to avoid delay. To the extent that these rules may be inconsistent with a rule of special application as provided by statute, executive order, or regulation, the latter is controlling. The Federal Rules of Civil Procedure may be used as a general guideline in any situation not provided for or controlled by these rules, by the Administrative Procedure Act, or by any other applicable statute, executive order, or regulation.

§ 68.2 Definitions.

For purposes of this part:

Adjudicatory proceeding means an administrative judicial-type proceeding, before the Office of the Chief Administrative Hearing Officer, commencing with the filing of a complaint and leading to the formulation of a final agency order;

Administrative Law Judge means an Administrative Law Judge appointed pursuant to the provisions of 5 U.S.C. 3105;

Administrative Procedure Act means those provisions of the Administrative Procedure Act, as codified, which are contained in 5 U.S.C. 551 through 559;

Certification means a formal assertion in writing of the specified fact(s), signed by the person(s) making the certification and thereby attesting to the truth of the content of the writing, except as follows:

(1) ''Certified court reporter'' means a person who has been deemed by an appropriate body to be qualified to transcribe or record testimony during formal legal proceedings,

(2) ''Certified mail'' means a form of mail similar to registered mail by which sender may require return receipt from addressee, and

(3) ''Certified copy'' means a copy of a document or record, signed by the officer to whose custody the original is entrusted, thereby attesting that the copy is a true copy;

Certify means the act of executing a certification;

Chief Administrative Hearing Officer or an official who has been designated to act as the Chief Administrative Hearing Officer, is the official who, under the Director, Executive Office for Immigration Review, generally administers the Administrative Law Judge program, exercises administrative supervision over Administrative Law Judges and others assigned to the Office of the Chief Administrative Hearing Officer, and who, in accordance with sections 274A(e)(7) and 274C(d)(4) of the INA, exercises discretionary authority to review the decisions and orders of Administrative Law Judges adjudicated under sections 274A and 274C of the INA;

Complainant means the Immigration and Naturalization Service in cases arising under sections 274A and 274C of the INA. In cases arising under section 274B of the INA, ''complainant'' means the Special Counsel (as defined in this section), and also includes the person or entity who has filed a charge with the Special Counsel, or, in private actions, an individual or private organization;

Complaint means the formal document initiating an adjudicatory proceeding;

Consent order means any written document containing a specified remedy or other relief agreed to by all parties and entered as an order by the Administrative Law Judge;

Debt Collection Improvement Act means the Debt Collection Improvement Act of 1996, Pub. L. 104–134, Title III, 110 Stat. 1321 (1996);

Decision means any findings of fact or conclusions of law by an Administrative Law Judge or the Chief Administrative Hearing Officer;

Document fraud cases means cases involving allegations under section 274C of the INA.

Entry means the date the Administrative Law Judge, Chief Administrative Hearing Officer, or the Attorney General signs the order; *Entry* as used in section 274B(i)(1) of the INA means the date the Administrative Law Judge signs the order;

Final agency order is an Administrative Law Judge's final order, in cases arising under sections 274A and 274C of the INA, that has not been modified, vacated, or remanded by the Chief Administrative Hearing Officer pursuant to § 68.54, referred to the Attorney General for review pursuant to § 68.55(a), or accepted by the Attorney General for review pursuant to § 68.55(b)(3). Alternatively, if the Chief Administrative Hearing Officer modifies or vacates the final order pursuant to § 68.54, the modification or vacation becomes the final agency order if it has not been referred to the Attorney General for review pursuant to § 68.55(a) or accepted by the Attorney General for review pursuant to § 68.55(b)(3). If the Attorney General enters an order that modifies or vacates either the Chief Administrative Hearing Officer's or the Administrative Law Judge's order, the Attorney General's

order is the final agency order. In cases arising under section 274B of the INA, an Administrative Law Judge's final order is also the final agency order;

Final order is an order by an Administrative Law Judge that disposes of a particular proceeding or a distinct portion of a proceeding, thereby concluding the jurisdiction of the Administrative Law Judge over that proceeding or portion thereof;

Hearing means that part of a proceeding that involves the submission of evidence, either by oral presentation or written submission;

Interlocutory order means an order that decides some point or matter, but is not a final order or a final decision of the whole controversy; it decides some intervening matter pertaining to the cause of action and requires further steps to be taken in order for the Administrative Law Judge to adjudicate the cause on the full merits;

INA means the Immigration and Nationality Act of 1952, ch. 477, Pub. L. 82–414, 66 Stat. 163, as amended;

Issued as used in section 274A(e)(8) and section 274C(d)(5) of the INA means the date on which an Administrative Law Judge's final order, the Chief Administrative Hearing Officer's order, or an adoption, modification, or vacation by the Attorney General becomes a final agency order;

Motion means an oral or written request, made by a person or a party, for some action by an Administrative Law Judge;

Order means a determination or mandate by an Administrative Law Judge, the Chief Administrative Hearing Officer, or the Attorney General that resolves some point or directs some action in the proceeding;

Ordinary mail refers to the mail service provided by the United States Postal Service using only standard postage fees, exclusive of special systems, electronic transfers, and other means that have the effect of providing expedited service;

Party includes all persons or entities named or admitted as a complainant, respondent, or intervenor in a proceeding; or any person filing a charge with the Special Counsel under section 274B of the INA, resulting in the filing of a complaint, concerning an unfair immigration-related employment practice;

Pleading means the complaint, motions, the answer thereto, any supplement or amendment thereto, and reply that may be permitted to any answer, supplement, or amendment submitted to the Administrative Law Judge or, when no judge is assigned, the Chief Administrative Hearing Officer;

Prohibition of indemnity bond cases means cases involving allegations under section 274A(g) of the INA;

Respondent means a party to an adjudicatory proceeding, other than a complainant, against whom findings may be made or who may be required to provide relief or take remedial action;

Special Counsel means the Special Counsel for Unfair Immigration-Related Employment Practices appointed by the President under section 274B of the INA, or his or her designee or in the case of a vacancy in the Office of Special Counsel, the officer or employee designated by the President who shall act as Special Counsel during such vacancy;

Unfair immigration-related employment practice cases means cases involving allegations under section 274B of the INA.

Unlawful employment cases means cases involving allegations under section 274A of the INA, other than prohibition of indemnity bond cases;

§ 68.3 Service of complaint, notice of hearing, written orders, and decisions.

(a) Service of complaint, notice of hearing, written orders, and decisions shall be made by the Office of the Chief Administrative Hearing Officer or the Administrative Law Judge to whom the case is assigned either:

(1) By delivering a copy to the individual party, partner of a party, officer of a corporate party, registered agent for service of process of a corporate party, or attorney or representative of record of a party;

(2) By leaving a copy at the principal office, place of business, or residence of a party; or

(3) By mailing to the last known address of such individual, partner, officer, or attorney or representative of record.

(b) Service of complaint and notice of hearing is complete upon receipt by addressee.

(c) In circumstances where the Office of the Chief Administrative Hearing Officer or the Administrative Law Judge encounters difficulty with perfecting service, the Chief Administrative Hearing Officer or the Administrative Law Judge may direct that a party execute service of process.

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§ 68.6 Service and filing of documents.

(a) *Generally.* An original and four copies of the complaint shall be filed with the Chief Administrative Hearing Officer. An original and two copies of all other pleadings, including any attachments, shall be filed with the Chief Administrative Hearing Officer by the parties presenting the pleadings until an Administrative Law Judge is assigned to a case. Thereafter, all pleadings shall be delivered or mailed for filing to the Administrative Law Judge assigned to the case, and shall be accompanied by a certification indicating service to all parties of record. When a party is represented by an attorney, service shall be made upon the attorney. Except as required by § 68.54(c) and paragraph (c) of this section, service of any document upon any party may be made by personal delivery or by mailing a copy to the last known address. The person serving the document shall certify to the manner and date of service.

(b) *Discovery.* The parties shall not file requests for discovery, answers, or responses thereto with the Administrative Law Judge. The Administrative Law Judge may, however, upon motion of a party or on his or her own initiative, order that such requests for discovery, answers, or responses thereto be filed.

(c) *Where a time limit is imposed by statute, regulation, or order.* Pleadings and briefs may be filed by facsimile with either an Administrative Law Judge or, in the case of a complaint, with the Chief Administrative Hearing Officer, only to toll the running of a time limit. All original signed pleadings and other documents must be forwarded concurrently with the transmission of the facsimile. Any party filing documents by facsimile must include in the certification of service a certification that service on the opposing party has also been made by facsimile or by same-day hand delivery, or, if service by facsimile or same-day hand delivery cannot be made, a certification that the document has been served instead by overnight delivery service. In the case of requests for administrative review, briefs or other filings relating to review by the Chief Administrative Hearing Officer, filing, or service shall be made using the procedure set forth in this paragraph pursuant to § 68.54(c).

§ 68.7 Form of pleadings.

(a) Every pleading shall contain a caption setting forth the statutory provision under which the proceeding is instituted, the title of the proceeding, the docket number assigned by the Office of the Chief Administrative Hearing Officer, the names of all parties (or, after the complaint, at least the first party named as a complainant or respondent), and a designation of the type of pleading (e.g., complaint, motion to dismiss). The pleading shall be signed, dated, and shall contain the

address and telephone number of the party or person representing the party. The pleading shall be on standard size (8½ x 11) paper and should also be typewritten when possible.

(b) A complaint filed pursuant to section 274A, 274B, or 274C of the INA shall contain the following:

(1) A clear and concise statement of facts, upon which an assertion of jurisdiction is predicated;

(2) The names and addresses of the respondents, agents, and/or their representatives who have been alleged to have committed the violation;

(3) The alleged violations of law, with a clear and concise statement of facts for each violation alleged to have occurred; and,

(4) A short statement containing the remedies and/or sanctions sought to be imposed against the respondent.

(5) The complaint must be accompanied by a statement identifying the party or parties to be served by the Office of the Chief Administrative Hearing Officer with notice of the complaint pursuant to § 68.3.

(c) Complaints filed pursuant to sections 274A and 274C of the INA shall be signed by an attorney and shall be accompanied by a copy of the Notice of Intent to Fine and Request for Hearing. Complaints filed pursuant to section 274B of the INA shall be accompanied by a copy of the charge, previously filed with the Special Counsel pursuant to section 274B(b)(1), and a copy of the Special Counsel's letter of determination regarding the charges.

(d) Illegible documents, whether handwritten, typewritten, photocopied, or otherwise, will not be accepted. Papers may be reproduced by any duplicating process, provided that all copies are clear and legible.

(e) All documents presented by a party in a proceeding must be in the English language or, if in a foreign language, accompanied by a certified translation.

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§ 68.9 Responsive pleadings—answer.

(a) *Time for answer.* Within thirty (30) days after the service of a complaint, each respondent shall file an answer.

(b) *Default.* Failure of the respondent to file an answer within the time provided may be deemed to constitute a waiver of his or her right to appear and contest the allegations of the complaint. The Administrative Law Judge may enter a judgment by default.

(c) *Answer.* Any respondent contesting any material fact alleged in a complaint, or contending that the amount of a proposed penalty or award is excessive or inappropriate, or contending that he or she is entitled to judgment as a matter of law, shall file an answer in writing. The answer shall include:

(1) A statement that the respondent admits, denies, or does not have and is unable to obtain sufficient information to admit or deny each allegation; a statement of lack of information shall have the effect of a denial (any allegation not expressly denied shall be deemed to be admitted); and

(2) A statement of the facts supporting each affirmative defense.

(d) *Reply.* Complainants may file a reply responding to each affirmative defense asserted.

(e) *Amendments and supplemental pleadings.* If a determination of a controversy on the merits will be facilitated thereby, the Administrative Law Judge may, upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties, allow appropriate amendments to complaints and other pleadings at any time prior to the issuance of the Administrative Law Judge's final order based on the complaint. When issues not raised by the pleadings are reasonably within the scope of the original complaint and are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings, and such amendments may be made as necessary to make the pleading conform to the evidence. The Administrative Law Judge may, upon reasonable notice and such terms as are just, permit supplemental pleadings setting forth transactions, occurrences, or events that have occurred or new law promulgated since the date of the pleadings and which are relevant to any of the issues involved.

§ 68.10 Motion to dismiss for failure to state a claim upon which relief can be granted.

(a) The respondent, without waiving the right to offer evidence in the event that the motion is not granted, may move for a dismissal of the complaint on the ground that the complainant has failed to state a claim upon which relief can be granted. The filing of a motion to dismiss does not affect the time period for filing an answer.

(b) The Administrative Law Judge may dismiss the complaint, based on a motion by the respondent or without a motion from the respondent, if the Administrative Law Judge determines that the complainant has failed to state a claim upon which relief can be granted. However, in the prehearing phase of an adjudicatory proceeding brought under this part, the Administrative Law Judge shall not dismiss a complaint in its entirety for failure to state a claim upon which relief may be granted, upon his or her own motion, without affording the complainant an opportunity to show cause why the complaint should not be dismissed.

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§ 68.14 Consent findings or dismissal.

(a) *Submission.* Where the parties or their authorized representatives or their counsel have entered into a settlement agreement, they shall:

(1) Submit to the presiding Administrative Law Judge:

(i) The agreement containing consent findings; and

(ii) A proposed decision and order; or

(2) Notify the Administrative Law Judge that the parties have reached a full settlement and have agreed to dismissal of the action. Dismissal of the action shall be subject to the approval of the Administrative Law Judge, who may require the filing of the settlement agreement.

(b) *Content.* Any agreement containing consent findings and a proposed decision and order disposing of a proceeding or any part thereof shall also provide:

(1) That the decision and order based on consent findings shall have the same force and effect as a decision and order made after full hearing;

(2) That the entire record on which any decision and order may be based shall consist solely of the complaint, notice of hearing, and any other such pleadings and documents as the Administrative Law Judge shall specify;

(3) A waiver of any further procedural steps before the Administrative Law Judge; and

(4) A waiver of any right to challenge or contest the validity of the decision and order entered into in accordance with the agreement.

(c) *Disposition.* In the event an agreement containing consent findings and an interim decision and order is submitted, the Administrative Law Judge, within thirty (30) days or as soon as practicable thereafter, may, if satisfied with its timeliness, form, and substance, accept such agreement by entering a decision and order based upon the agreed findings. In his or her discretion, the Administrative Law Judge may conduct a hearing to determine the fairness of the agreement, consent findings, and proposed decision and order.

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§ 68.18 Discovery—general provisions.

(a) *General.* Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things, or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admissions. The frequency or extent of these methods may be limited by the Administrative Law Judge upon his or her own initiative or pursuant to a motion under paragraph (c) of this section.

(b) *Scope of discovery.* Unless otherwise limited by order of the Administrative Law Judge in accordance with the rules in this part, the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of any discoverable matter.

(c) *Protective orders.* Upon motion by a party or the person from whom discovery is sought, and for good cause shown, the Administrative Law Judge may make any order that justice requires to protect a party or person from annoyance, harassment, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) The discovery not be had;

(2) The discovery may be had only on specified terms and conditions, including a designation of the time, amount, duration, or place;

(3) The discovery may be had only by a method of discovery other than that selected by the party seeking discovery; or

(4) Certain matters not relevant may not be inquired into, or that the scope of discovery be limited to certain matters.

(d) *Supplementation of responses.* A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his or her response to include information thereafter acquired, except as follows:

(1) A party is under a duty to supplement timely his or her response with respect to any question directly addressed to:

(i) The identity and location of persons having knowledge of discoverable matters; and

(ii) The identity of each person expected to be called as an expert witness at the hearing, the subject matter on which he or she is expected to testify, and the substance of his or her testimony.

(2) A party is under a duty to amend timely a prior response if he or she later obtains information upon the basis of which:

(i) He or she knows the response was incorrect when made; or

(ii) He or she knows that the response, though correct when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the Administrative Law Judge upon motion of a party or agreement of the parties.

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§ 68.22 Depositions.

(a) *Notice.* Any party desiring to take the deposition of a witness shall give notice in writing to the witness and other parties of the time and place of the deposition, and the name and address of each witness. If documents are requested, the notice shall include a written request for the production of documents. Not less than ten (10) days written notice shall be given when the deposition is to be taken within the continental United States, and not less then twenty (20) days written notice shall be given when the deposition is to be taken elsewhere, unless otherwise permitted by the Administrative Law Judge or agreed to by the parties.

(b) *When, how, and by whom taken.* The following procedures shall apply to depositions:

(1) Depositions may be taken by oral examination or upon written interrogatories before any person having power to administer oaths. The party taking a deposition upon oral examination shall state in the notice the method by which the testimony shall be recorded. Unless the Administrative Law Judge orders otherwise, it may be recorded by sound, sound-and-visual, or stenographic means, and the party taking the deposition shall bear the cost of the recording. Any party may arrange for a transcription to be made from the recording of a deposition taken by non-stenographic means.

(2) Each witness testifying upon deposition shall testify under oath and any other party shall have the right to cross-examine. The questions asked and the answers thereto, together with all objections made, shall be recorded as provided by paragraph (b)(1) of this section. The person administering the oath shall certify in writing that the transcript or recording is a true record of the testimony given by the witness. The witness shall review the transcript or recording within thirty (30) days of notification that it is available and subscribe in writing to the deposition, indicating in writing any changes in form or substance, unless such review is waived by the witness and the parties by stipulation.

(c) *Motion to terminate or limit examination.* During the taking of a deposition, a party or deponent may request suspension of the deposition on grounds of bad faith in the conduct of the examination, oppression of a deponent or party, or improper questions asked. The deposition will then be adjourned. However, the objecting party or deponent must immediately move the Administrative Law Judge for a ruling on his or her objections to the deposition conduct or proceedings.

§ 68.23 Motion to compel response to discovery; sanctions.

(a) If a deponent fails to answer a question asked, or a party upon whom a discovery request is made pursuant to §§ 68.18 through 68.22 fails to respond adequately or objects to the request or to any part thereof, or fails to permit inspection as requested, the discovering party may move the Administrative Law Judge for an order compelling a response or inspection in accordance with the request. A party who has taken a deposition or has requested admissions or has served interrogatories may move to determine the sufficiency of the answers or objections thereto. Unless the objecting party sustains his or her burden of showing that the objection is justified, the Administrative Law Judge may order that an answer be served. If the Administrative Law Judge determines that an answer does not comply with the requirements of the rules in this part, he or she may order either that the matter is admitted or that an amended answer be served.

(b) The motion shall set forth and include:

(1) The nature of the questions or request;

(2) The response or objections of the party upon whom the request was served;

(3) Arguments in support of the motion; and

(4) A certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure information or material without action by the Administrative Law Judge.

(c) If a party, an officer or an agent of a party, or a witness, fails to comply with an order, including, but not limited to, an order for the taking of a deposition, the production of

documents, the answering of interrogatories, a response to a request for admissions, or any other order of the Administrative Law Judge, the Administrative Law Judge may, for the purposes of permitting resolution of the relevant issues and disposition of the proceeding and to avoid unnecessary delay, take the following actions:

(1) Infer and conclude that the admission, testimony, documents, or other evidence would have been adverse to the non-complying party;

(2) Rule that for the purposes of the proceeding the matter or matters concerning which the order was issued be taken as established adversely to the non-complying party;

(3) Rule that the non-complying party may not introduce into evidence or otherwise rely upon testimony by such party, officer, or agent, or the documents or other evidence, in support of or in opposition to any claim or defense;

(4) Rule that the non-complying party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence would have shown;

(5) Rule that a pleading, or part of a pleading, or a motion or other submission by the non-complying party, concerning which the order was issued, be stricken, or that a decision of the proceeding be rendered against the non-complying party, or both;

(6) In the case of failure to comply with a subpoena, the Administrative Law Judge may also take the action provided in § 68.25(e); and

(7) In ruling on a motion made pursuant to this section, the Administrative Law Judge may make and enter a protective order such as he or she is authorized to enter on a motion made pursuant to § 68.42.

(d) *Evasive or incomplete response.* For the purposes of this section, an evasive or incomplete response to discovery may be treated as a failure to respond.

§ 68.24 Use of depositions at hearings.

(a) *Generally.* At the hearing, any part or all of a deposition, so far as admissible, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness;

(2) The deposition of an expert witness may be used by any party for any purpose, unless the Administrative Law Judge rules that such use would be unfair or a violation of due process;

(3) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or duly authorized agent of a public or private corporation, partnership, or association which is a party, may be used by any other party for any purpose;

(4) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the Administrative Law Judge finds:

(i) That the witness is dead;

(ii) That the witness is out of the United States or more than 100 miles from the place of hearing unless it appears that the absence of the witness was procured by the party offering the deposition;

(iii) That the witness is unable to attend to testify because of age, sickness, infirmity, or imprisonment;

(iv) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(v) Upon application and notice, that such exceptional circumstances exist to make it desirable, in the interest of justice, and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used;

(5) If only part of a deposition is offered in evidence by a party, any other party may require him or her to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts; and

(6) Substitution of parties does not affect the right to use depositions previously taken; and, when a proceeding in any hearing has been dismissed and another proceeding involving the parties or their representatives or successors in interest has been brought (or commenced), all depositions lawfully taken and duly filed in the former proceeding may be used in the latter if originally taken therefor.

(7) A party offering deposition testimony may offer it in stenographic or nonstenographic form, but if in nonstenographic form, the party shall also be responsible for providing a transcript of the portions so offered.

(b) *Objections to admissibility.* Except as provided in this paragraph, objections may be made at the hearing to receiving in evidence any deposition or part thereof for any reason that would require the exclusion of the evidence if the witness were then present and testifying.

(1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one that might have been obviated or removed if presented at that time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless reasonable objection thereto is made at the taking of the deposition.

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§ 68.27 Continuances.

(a) *When granted.* Continuances shall only be granted in cases where the requester has a prior judicial commitment or can demonstrate undue hardship, or a showing of other good cause.

(b) *Time limit for requesting.* Except for good cause arising thereafter, requests for continuances must be filed not later than fourteen (14) days prior to the date of the scheduled proceeding.

(c) *How filed.* Motions for continuances shall be in writing, unless made during the prehearing conference or the hearing. Copies shall be served on all parties. Any motions for continuances filed fewer than fourteen (14) days before the date of the scheduled proceeding shall, in addition to the written request, be telephonically communicated to the Administrative Law Judge or a member of the Judge's staff and to all other parties.

(d) *Ruling.* Time permitting, the Administrative Law Judge shall enter a written order in advance of the scheduled proceeding date that either grants or denies the request. Otherwise, the ruling shall be made orally by telephonic communication to the party requesting the continuance, who shall be responsible for telephonically notifying all other parties. Oral orders shall be confirmed in writing by the Administrative Law Judge.

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§ 68.33 Participation of parties and representation.

(a) *Participation of parties.* Any party shall have the right to appear in a proceeding and may examine and cross-examine witnesses and introduce into the record documentary or other relevant evidence, except that the participation of any intervenor shall be limited to the extent prescribed by the Administrative Law Judge.

(b) *Person compelled to testify.* Any person compelled to testify in a

proceeding in response to a subpoena may be accompanied, represented, and advised by an individual meeting the requirements of paragraph (c) of this section.

(c) *Representation for respondents.* Persons who may appear before the Administrative Law Judges on behalf of respondents include:

(1) An attorney at law who is admitted to practice before the federal courts or before the highest court of any state, the District of Columbia, or any territory or commonwealth of the United States, may practice before the Administrative Law Judges. An attorney's own representation that the attorney is in good standing before any of such courts shall be sufficient proof thereof, unless otherwise ordered by the Administrative Law Judge.

(2) A law student, enrolled in an accredited law school, may practice before an Administrative Law Judge. The law student must seek advance approval by filing a statement with the Administrative Law Judge proving current participation in a legal assistance program or clinic conducted by the law school. Practice before the Administrative Law Judge shall be under direct supervision of a faculty member or an attorney. An appearance by a law student shall be without direct or indirect remuneration. The Administrative Law Judge may determine the amount of supervision required of the supervising faculty member or attorney.

(3) An individual who is neither an attorney nor a law student may be allowed to provide representation to a party upon a written order from the Administrative Law Judge assigned to the case granting approval of the representation. The individual must file a written application with the Administrative Law Judge demonstrating that the individual possesses the knowledge of administrative procedures, technical expertise, or other qualifications necessary to render valuable service in the proceedings and is otherwise competent to advise and assist in the presentation of matters in the proceedings.

(i) *Application.* A written application by an individual who is neither an attorney nor a law student for admission to represent a party in proceedings shall be submitted to the Administrative Law Judge within ten (10) days from the receipt of the Notice of Hearing and complaint by the party on whose behalf the individual wishes to file the application. This period of time for filing the application may be extended upon approval of the Administrative Law Judge. The application shall set forth in detail the requesting individual's qualifications to represent the party.

(ii) *Inquiry on qualifications or ability.* The Administrative Law Judge may, at any time, inquire as to the qualifications or ability of any non-attorney to render assistance in proceedings before the Administrative Law Judge.

(iii) *Denial of authority to appear.* Except as provided in paragraph (c)(3)(iv) of this section, the Administrative Law Judge may enter an order denying the privilege of appearing to any individual whom the Judge does not possess the requisite qualifications to represent others; is lacking in character or integrity; has engaged in unethical or improper professional conduct; or has engaged in an act involving moral turpitude.

(iv) *Exception.* Any individual may represent him or herself or any corporation, partnership or unincorporated association of which that individual is a partner or general officer in proceedings before the Administrative Law Judge without prior approval of the Administrative Law Judge and without filing the written application required by this paragraph. Such individuals must, however, file a notice of appearance in the manner set forth in paragraph (e) of this section.

(d) *Representation for the Department of Justice.* The Department of Justice may be represented by the appropriate counsel in these proceedings.

(e) *Proof of authority.* Any individual acting in a representative capacity in any adjudicative proceeding may be required by the Administrative Law Judge to show his or her authority to act in such capacity. Representation of a respondent shall be at no expense to the Government.

(f) *Notice of appearance.* Except for a government attorney filing a complaint pursuant to section 274A, 274B, or 274C of the INA, each attorney shall file a notice of appearance. Such notice shall indicate the name of the case or controversy, the case number if assigned, and the party on whose behalf the appearance is made. The notice of appearance shall be signed by the attorney, and shall be accompanied by a certification indicating that such notice was served on all parties of record. A request for a hearing signed by an attorney and filed with the Immigration and Naturalization Service pursuant to section 274A(e)(3)(A) or 274C(d)(2)(A) of the INA, and containing the same information as required by this section, shall be considered a notice of appearance on behalf of the respondent for whom the request was made.

(g) *Withdrawal or substitution of a representative.* Withdrawal or substitution of an attorney or representative may be permitted by the Administrative Law Judge upon written motion. The Administrative Law Judge shall enter an order granting or denying such motion for withdrawal or substitution.

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§ 68.38 Motion for summary decision.

(a) A complainant, not fewer than thirty (30) days after receipt by respondent of the complaint, may move with or without supporting affidavits for summary decision on all or any part of the complaint. Motions by any party for summary decision on all or any part of the complaint will not be entertained within the twenty (20) days prior to any hearing, unless the Administrative Law Judge decides otherwise. Any other party, within ten (10) days after service of a motion for summary decision, may respond to the motion by serving supporting or opposing papers with affidavits, if appropriate, or countermove for summary decision. The Administrative Law Judge may set the matter for argument and/or call for submission of briefs.

(b) Any affidavits submitted with the motion shall set forth such facts as would be admissible in evidence in a proceeding subject to 5 U.S.C. 556 and 557 and shall show affirmatively that the affiant is competent to testify to the matters stated therein. When a motion for summary decision is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denials of such pleading. Such response must set forth specific facts showing that there is a genuine issue of fact for the hearing.

(c) The Administrative Law Judge shall enter a summary decision for either party if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision.

(d) *Form of summary decisions.* Any final order entered as a summary decision shall conform to the requirements for all final orders. A final order made under this section shall include a statement of:

(1) Findings of fact and conclusions of law, and the reasons therefor, on all issues presented; and

(2) Any terms and conditions of the final order.

(e) *Hearings on issue of fact.* Where a genuine question of material fact is

raised, the Administrative Law Judge shall set the case for an evidentiary hearing.

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§ 68.42 In camera and protective orders.

(a) *Privileged communications.* Upon application of any person, the Administrative Law Judge may limit discovery or introduction of evidence or enter such protective or other orders as in the Judge's judgment may be consistent with the objective of protecting privileged communications and of protecting data and other material the disclosure of which would unreasonably prejudice a party, witness, or third party.

(b) *Classified or sensitive matter.* (1) Without limiting the discretion of the Administrative Law Judge to give effect to any other applicable privilege, it shall be proper for the Administrative Law Judge to limit discovery or introduction of evidence or to enter such protective or other orders as in the Judge's judgment may be consistent with the objective of preventing undue disclosure of classified or sensitive matter. When the Administrative Law Judge determines that information in documents containing sensitive matter should be made available the Judge may direct the producing party to prepare an unclassified or nonsensitive summary or extract of the original. The summary or extract may be admitted as evidence in the record.

(2) If the Administrative Law Judge determines that this procedure is inadequate and that classified or otherwise sensitive matter must form part of the record in order to avoid prejudice to any party, the Judge may so advise the parties and provide an opportunity for arrangements to permit a party or a representative to have access to such matter. Such arrangements may include obtaining security clearances or giving counsel for a party access to sensitive information and documents subject to assurances against further disclosure.

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§ 68.52 Final order of the Administrative Law Judge.

(a) *Proposed final order.* (1) Within twenty (20) days of filing of the transcript of the testimony, or within such additional time as the Administrative Law Judge may allow, the Administrative Law Judge may require the parties to file proposed findings of fact, conclusions of law, and orders, together with supporting briefs expressing the reasons for such proposals. Such proposals and briefs shall be served on all parties and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(2) The Administrative Law Judge may, by order, require that when a proposed order is filed for the Administrative Law Judge's consideration, the filing party shall submit to the Administrative Law Judge a copy of the proposed order on a 3.5″ microdisk.

(b) *Entry of final order.* Unless an extension of time is given by the Chief Administrative Hearing Officer for good cause, the Administrative Law Judge shall enter the final order within sixty (60) days after receipt of the hearing transcript or of post-hearing briefs, proposed findings of fact, and conclusions of law, if any, by the Administrative Law Judge. The final order entered by the Administrative Law Judge shall be based upon the whole record. It shall be supported by reliable and probative evidence. The standard of proof shall be by a preponderance of the evidence.

(c) *Contents of final order with respect to unlawful employment of unauthorized aliens.*

(1) If, upon the preponderance of the evidence, the Administrative Law Judge determines that a person or entity named in the complaint has violated section 274A(a)(1)(A) or (a)(2) of the INA, the final order shall require the person or entity to cease and desist from such violations and to pay a civil penalty in an amount of:

(i) Not less than $250 and not more than $2,000 for each unauthorized alien with respect to whom there was a violation of either such paragraph occurring before March 15, 1999; not less than $275 and not more than $2,200 for each unauthorized alien with respect to whom there was a violation of either such paragraph occurring on or after March 15, 1999;

(ii) In the case or a person or entity previously subject to one final order under this paragraph (c)(1), not less than $2,000 and not more than $5,000 for each unauthorized alien with respect to whom there was a violation of either such paragraph occurring before March 15, 1999, and not less than $2,200 and not more than $5,500 for each unauthorized alien with respect to whom there was a violation of either such paragraph occurring on or after March 15, 1999; or

(iii) In the case of a person or entity previously subject to more than one final order under paragraph (c)(1) of this section, not less than $3,000 and not more than $10,000 for each unauthorized alien with respect to whom there was a violation of each such paragraph occurring before March 15, 1999, and not less than $3,300 and not more than $11,000 for each unauthorized alien with respect to whom there was a violation of each such paragraph occurring on or after March 15, 1999.

(2) The final order may also require the respondent to participate in, and comply with the terms of, one of the pilot programs set forth in Pub. L. 104–208, Div. C, sections 401–05, 110 Stat. 3009, 3009–655 to 3009–665 (1996) (codified at 8 U.S.C. 1324a (note)), with respect to the respondent's hiring or recruitment or referral of individuals in a state (as defined in section 101(a)(36) of the INA) covered by such a program.

(3) The final order may also require the respondent to comply with the requirements of section 274A(b) of the INA with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years; and to take such other remedial action as is appropriate.

(4) In the case of a person or entity composed of distinct, physically separate subdivisions, each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and under the control of, or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(5) If, upon a preponderance of the evidence, the Administrative Law Judge determines that a person or entity named in the complaint has violated section 274A(a)(1)(B) of the INA, except as set forth in paragraph (c)(6) of this section, the final order under this paragraph shall require the person or entity to pay a civil penalty in an amount of not less than $100 and not more than $1,000 for each individual with respect to whom such violation occurred before March 15, 1999, and not less than $110 and not more than $1,100 for each individual with respect to whom such violation occurred on or after March 15, 1999,. In determining the amount of the penalty, due consideration shall be given to the size of the business of the employer being charged, the good faith of the employer, the seriousness of the violation, whether or not the individual was an unauthorized alien, and the history of previous violations.

(6) With respect to a violation of section 274A(a)(1)(B) of the INA where a person or entity participating in a pilot program has failed to provide notice of final nonconfirmation of employment eligibility of an individual to the Attorney General as required by Pub. L. 104-208, Div. C, section 403(a)(4)(C),

110 Stat. 3009, 3009–661 (1996) (codified at 8 U.S.C. 1324a (note)), the final order under this paragraph shall require the person or entity to pay a civil penalty in an amount of not less than $500 and not more than $1,000 for each individual with respect to whom such violation occurred.

(7) *Prohibition of indemnity bond cases.* If, upon the preponderance of the evidence, the Administrative Law Judge determines that a person or entity has violated section 274A(g)(1) of the INA, the final order shall require the person or entity to pay a civil penalty of $1,000 for each individual with respect to whom such violation occurred before March 15, 1999, and $1,100 for each individual with respect to whom such violation occurred on or after March 15, 1999, and require the return of any amounts received in such violation to the individual or, if the individual cannot be located, to the general fund of the Treasury.

(8) *Adjustment of penalties for inflation.* The civil penalties cited in paragraph (c) of this section shall be subject to adjustments for inflation at least every four years in accordance with the Debt Collection Improvement Act.

(9) *Attorney's fees.* A prevailing respondent may receive, pursuant to 5 U.S.C. 504, an award of attorney's fees in unlawful employment and prohibition of indemnity bond cases. Any application for attorney's fees shall be accompanied by an itemized statement from the attorney or representative, stating the actual time expended and the rate at which fees and other expenses were computed. An award of attorney's fees will not be made if the Administrative Law Judge determines that the complainant's position was substantially justified or special circumstances make the award unjust.

(d) *Contents of final order with respect to unfair immigration-related employment practice cases.*

(1) If, upon the preponderance of the evidence, the Administrative Law Judge determines that any person or entity named in the complaint has engaged in or is engaging in an unfair immigration-related employment practice, the final order shall include a requirement that the person or entity cease and desist from such practice. The final order may also require the person or entity:

(i) To comply with the requirements of section 274A(b) of the INA with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years;

(ii) To retain for a period of up to three years, and only for purposes consistent with section 274A(b)(5) of the INA, the name and address of each individual who applies, in person or in writing, for hiring for an existing position, or for recruiting or referring for a fee, for employment in the United States;

(iii) To hire individuals directly and adversely affected, with or without back pay;

(iv) To post notices to employees about their rights under section 274B and employers' obligations under section 274A;

(v) To educate all personnel involved in hiring and in complying with section 274A or 274B about the requirements of 274A or 274B;

(vi) To order, in an appropriate case, the removal of a false performance review or false warning from an employee's personnel file;

(vii) To order, in an appropriate case, the lifting of any restrictions on an employee's assignments, work shifts, or movements;

(viii) Except as provided in paragraph (d)(1)(xii) of this section, to pay a civil penalty of not less than $250 and not more than $2,000 for each individual discriminated against before March 15, 1999, and not less than $275 and not more than $2,200 for each individual discriminated against on or after March 15, 1999;

(ix) Except as provided in paragraph (d)(1)(xii) of this section, in the case of a person or entity previously subject to a single final order under section 274B(g)(2) of the INA, to pay a civil penalty of not less than $2,000 and not more than $5,000 for each individual discriminated against before March 15, 1999, and not less than $2,200 and not more than $5,500 for each individual discriminated against on or after March 15, 1999;

(x) Except as provided in paragraph (d)(1)(xii) of this section, in the case of a person or entity previously subject to more than one final order under section 274B(g)(2) of the INA, to pay a civil penalty of not less than $3,000 and not more than $10,000 for each individual discriminated against before March 15, 1999, and not less than $3,300 and not more than $11,000 for each individual discriminated against on or after March 15, 1999;

(xi) To participate in, and comply with the terms of, one of the pilot programs set forth in Pub. L. 104–208, Div. C, sections 401–05, 110 Stat. 3009, 3009–655 to 3009–665 (1996) (codified at 8 U.S.C. 1324a (note)), with respect to the respondent's hiring or recruitment or referral of individuals in a state (as defined in section 101(a)(36) of the INA) covered by such a program; and

(xii) In the case of an unfair immigration-related employment practice where a person or entity, for the purpose or with the intent of discriminating against an individual in violation of section 274B(a), requests more or different documents than are required under section 274A(b) or refuses to honor documents that on their face reasonably appear to be genuine, to pay a civil penalty of not less than $100 and not more than $1,000 for each individual discriminated against before March 15, 1999, and not less than $110 and not more than $1,100 for each individual discriminated against on or after March 15, 1999, or to order any of the remedies listed as paragraphs (d)(1)(i) through (d)(1)(vii) of this section.

(2) The civil penalties cited in paragraph (d) of this section shall be subject to adjustments for inflation at least every four years in accordance with the Debt Collection Improvement Act.

(3) Back pay liability shall not accrue from a date more than two years prior to the date of the filing of a charge with the Special Counsel. In no event shall back pay accrue from before November 6, 1986. Interim earnings or amounts earnable with reasonable diligence by the individual or individuals discriminated against shall operate to reduce the back pay otherwise allowable. No order shall require the hiring of an individual as an employee, or the payment to an individual of any back pay, if the individual was refused employment for any reason other than discrimination on account of national origin or citizenship status unless it is determined that an unfair immigration-related employment practice exists under section 274B(a)(5) of the INA.

(4) In applying paragraph (d) of this section in the case of a person or entity composed of distinct, physically separate subdivisions, each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under the control of or common control with another subdivision, each such subdivision shall be considered a separate person or entity.

(5) If, upon the preponderance of the evidence, the Administrative Law Judge determines that a person or entity named in the complaint has not engaged in and is not engaging in an unfair immigration-related employment practice, then the final order shall dismiss the complaint.

(6) *Attorney's fees.* The Administrative Law Judge in his or her

discretion may allow a prevailing party, other than the United States, a reasonable attorney's fee if the losing party's argument is without reasonable foundation in law and fact. Any application for attorney's fees shall be accompanied by an itemized statement from the attorney or representative stating the actual time expended and the rate at which fees and other expenses were computed.

(e) *Contents of final order with respect to document fraud cases.* (1) If, upon the preponderance of the evidence, the Administrative Law Judge determines that a person or entity has violated section 274C of the INA, the final order shall include a requirement that the respondent cease and desist from such violations and pay a civil money penalty in an amount of:

(i) Not less than $250 and not more than $2,000 for each document that is the subject of a violation under section 274C(a)(1) through (6) of the INA before March 15, 1999, and not less than $275 and not more than $2,200 for each document that is the subject of a violation under section 274C(a)(1) through (6) of the INA on or after March 15, 1999; or,

(ii) In the case of a respondent previously subject to one or more final orders under section 274C(d)(3) of the INA, not less than $2,000 and not more than $5,000 for each document that is the subject of a violation under section 274C(a)(1) through (6) of the INA before March 15, 1999, and not less than $2,200 and not more than $5,500 for each document that is the subject of a violation under section 274C(a) (1) through (6) of the INA on or after March 15, 1999.

(2) In the case of a person or entity composed of distinct, physically separate subdivisions, each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and under the control of, or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(3) *Adjustment of penalties for inflation.* The civil penalties cited in paragraph (e) of this section shall be subject to adjustments for inflation at least every four years in accordance with the Debt Collection Improvement Act.

(4) *Attorney's fees.* A prevailing respondent may receive, pursuant to 5 U.S.C. 504, an award of attorney's fees in document fraud cases. Any application for attorney's fees shall be accompanied by an itemized statement from the attorney or representative, stating the actual time expended and the rate at which fees and other expenses were computed. An award of attorney's fees shall not be made if the Administrative Law Judge determines that the complainant's position was substantially justified or special circumstances make the award unjust.

(f) *Corrections to orders.* An Administrative Law Judge may, in the interest of justice, correct any clerical mistakes or typographical errors contained in a final order entered in a case arising under section 274A or 274C of the INA at any time within thirty (30) days after the entry of the final order. Changes other than clerical mistakes or typographical errors will be considered in cases arising under sections 274A and 274C of the INA by filing a request for review to the Chief Administrative Hearing Officer by a party under § 68.54, or the Chief Administrative Hearing Officer may exercise discretionary review to make such changes pursuant to § 68.54. In cases arising under section 274B of the INA, an Administrative Law Judge may correct any substantive, clerical, or typographical errors or mistakes in a final order at any time within sixty (60) days after the entry of the final order.

(g) *Final agency order.* In a case arising under section 274A or 274C of the INA, the Administrative Law Judge's order becomes the final agency order sixty (60) days after the date of the Administrative Law Judge's order, unless the Chief Administrative Hearing Officer modifies, vacates, or remands the Administrative Law Judge's final order pursuant to § 68.54, or unless the order is referred to the Attorney General pursuant to § 68.55. In a case arising under section 274B of the INA, the Administrative Law Judge's order becomes the final agency order on the date the order is issued.

§ 68.53 Review of an interlocutory order of an Administrative Law Judge in cases arising under section 274A or 274C.

(a) *Authority.* In a case arising under section 274A or 274C of the Immigration and Nationality Act, the Chief Administrative Hearing Officer may, within thirty (30) days of the date of an Administrative Law Judge's interlocutory order, issue an order that modifies or vacates the interlocutory order. The Chief Administrative Hearing Officer may review an Administrative Law Judge's interlocutory order if:

(1) An Administrative Law Judge, when issuing an interlocutory order, states in writing that the Judge believes:

(i) That the order concerns an important question of law on which there is a substantial difference of opinion; and

(ii) That an immediate appeal will advance the ultimate termination of the proceeding or that subsequent review will be an inadequate remedy; or

(2) Within ten (10) days of the date of the entry of an interlocutory order a party requests by motion that the Chief Administrative Hearing Officer review the interlocutory order. This motion shall contain a clear statement of why interlocutory review is appropriate under the standards set out in paragraph (a)(1) of this section; or

(3) Within ten (10) days of the entry of the interlocutory order, the Chief Administrative Hearing Officer, upon the Officer's own initiative, determines that such order is appropriate for interlocutory review pursuant to the standards set out in paragraph (a)(1) and issues a notification of review. This notification shall state the issues to be reviewed.

(b) *Stay of proceedings.* Review of an Administrative Law Judge's interlocutory order will not stay the proceeding unless the Administrative Law Judge or the Chief Administrative Hearing Officer determines that the circumstances require a postponement.

(c) *Review by Chief Administrative Hearing Officer.* Review by the Chief Administrative Hearing Officer of an interlocutory order shall be conducted in the same manner as is provided for review of final orders in § 68.54(b) through (d). An interlocutory order, or an order modifying, vacating, or remanding an interlocutory order, shall not be considered a final agency order. If the Chief Administrative Hearing Officer does not modify, vacate, or remand an interlocutory order reviewed pursuant to paragraph (a) within thirty (30) days of the date that the order is entered, the Administrative Law Judge's interlocutory order is deemed adopted.

(d) *Effect of interlocutory review.* (1) An order by the Chief Administrative Hearing Officer modifying or vacating an interlocutory order shall also remand the case to the Administrative Law Judge. Further proceedings in the case shall be conducted consistent with the Chief Administrative Hearing Officer's order.

(2) Whether or not an interlocutory order is reviewed by the Chief Administrative Hearing Officer, all parties retain the right to request administrative review of the final order of the Administrative Law Judge pursuant to § 68.54 with respect to all issues in the case.

§ 68.54 Administrative review of a final order of an Administrative Law Judge in cases arising under section 274A or 274C.

(a) *Authority of the Chief Administrative Hearing Officer.* In a case arising under section 274A or 274C of the INA, the Chief Administrative Hearing Officer has discretionary authority, pursuant to sections 274A(e)(7) and 274C(d)(4) of the INA and 5 U.S.C. 557, to review any final order of an Administrative Law Judge in accordance with the provisions of this section.

(1) A party may file with the Chief Administrative Hearing Officer a written request for administrative review within ten (10) days of the date of entry of the Administrative Law Judge's final order, stating the reasons for or basis upon which it seeks review.

(2) The Chief Administrative Hearing Officer may review an Administrative Law Judge's final order on his or her own initiative by issuing a notification of administrative review within ten (10) days of the date of entry of the Administrative Law Judge's order. This notification shall state the issues to be reviewed.

(b) *Written and oral arguments.* (1) In any case in which administrative review has been requested or ordered pursuant to paragraph (a) of this section, the parties may file briefs or other written statements within twenty-one (21) days of the date of entry of the Administrative Law Judge's order.

(2) At the request of a party, or on the Officer's own initiative, the Chief Administrative Hearing Officer may, at the Officer's discretion, permit or require additional filings or may conduct oral argument in person or telephonically.

(c) *Filing and service of documents relating to administrative review.* All requests for administrative review, briefs, and other filings relating to review by the Chief Administrative Hearing Officer shall be filed and served by facsimile or same-day hand delivery, or if such filing or service cannot be made, by overnight delivery, as provided in § 68.6(c). A notification of administrative review by the Chief Administrative Hearing Officer shall also be served by facsimile or same-day hand delivery, or if such service cannot be made, by overnight delivery service.

(d) *Review by the Chief Administrative Hearing Officer.* (1) On or before thirty (30) days subsequent to the date of entry of the Administrative Law Judge's final order, but not before the time for filing briefs has expired, the Chief Administrative Hearing Officer may enter an order that modifies or vacates the Administrative Law Judge's order, or remands the case to the Administrative Law Judge for further proceedings consistent with the Chief Administrative Hearing Officer's order. However, the Chief Administrative Hearing Officer is not obligated to enter an order unless the Administrative Law Judge's order is modified, vacated or remanded.

(2) If the Chief Administrative Hearing Officer enters an order that remands the case to the Administrative Law Judge, the Administrative Law Judge will conduct further proceedings consistent with the Chief Administrative Hearing Officer's order. Any administrative review of the Administrative Law Judge's subsequent order shall be conducted in accordance with this section.

(3) The Chief Administrative Hearing Officer may make technical corrections to the Officer's order up to and including thirty (30) days subsequent to the issuance of that order.

(e) *Final agency order.* If the Chief Administrative Hearing Officer enters a final order that modifies or vacates the Administrative Law Judge's final order, and the Chief Administrative Hearing Officer's order is not referred to the Attorney General pursuant to § 68.55, the Chief Administrative Hearing Officer's order becomes the final agency order thirty (30) days subsequent to the date of the modification or vacation.

§ 68.55 Referral of cases arising under sections 274A or 274C to the Attorney General for review.

(a) *Referral of cases by direction of the Attorney General.* Within thirty (30) days of the entry of a final order by the Chief Administrative Hearing Officer modifying or vacating an Administrative Law Judge's final order, or within sixty (60) days of the entry of an Administrative Law Judge's final order, if the Chief Administrative Hearing Officer does not modify or vacate the Administrative Law Judge's final order, the Chief Administrative Hearing Officer shall promptly refer to the Attorney General for review any final order in cases arising under section 274A or 274C of the INA if the Attorney General so directs the Chief Administrative Hearing Officer. When a final order is referred to the Attorney General in accordance with this paragraph, the Chief Administrative Hearing Officer shall give the Administrative Law Judge and all parties a copy of the referral.

(b) *Request by Commissioner of Immigration and Naturalization for review by the Attorney General.* The Chief Administrative Hearing Officer shall promptly refer to the Attorney General for review any final order in cases arising under sections 274A or 274C of the INA at the request of the Commissioner of Immigration and Naturalization within thirty (30) days of the entry of a final order modifying or vacating the Administrative Law Judge's final order or within sixty (60) days of the entry of an Administrative Law Judge's final order, if the Chief Administrative Hearing Officer does not modify or vacate the Administrative Law Judge's final order.

(1) The Immigration and Naturalization Service must first seek review of an Administrative Law Judge's final order by the Chief Administrative Hearing Officer, in accordance with § 68.54 before the Commissioner of Immigration and Naturalization may request that an Administrative Law Judge's final order be referred to the Attorney General for review.

(2) To request referral of a final order to the Attorney General, the Commissioner of Immigration and Naturalization must submit a written request to the Chief Administrative Hearing Officer and transmit copies of the request to all other parties to the case and to the Administrative Law Judge at the time the request is made. The written statement shall contain a succinct statement of the reasons the case should be reviewed by the Attorney General and the grounds for appeal.

(3) The Attorney General, in the exercise of the Attorney General's discretion, may accept the Commissioner's request for referral of the case for review by issuing a written notice of acceptance within sixty (60) days of the date of the request. Copies of such written notice shall be transmitted to all parties in the case and to the Chief Administrative Hearing Officer.

(c) *Review by the Attorney General.* When a final order of an Administrative Law Judge or the Chief Administrative Hearing Officer is referred to the Attorney General pursuant to paragraph (a) of this section, or a referral is accepted in accordance with paragraph (b)(3) of this section, the Attorney General shall review the final order pursuant to section 274A(e)(7) or 274C(d)(4) of the INA and 5 U.S.C. 557. No specific time limit is established for the Attorney General's review.

(1) All parties shall be given the opportunity to submit briefs or other written statements pursuant to a schedule established by the Chief Administrative Hearing Officer or the Attorney General.

(2) The Attorney General shall enter an order that adopts, modifies, vacates, or remands the final order under review.

The Attorney General's order shall be stated in writing and shall be transmitted to all parties in the case and to the Chief Administrative Hearing Officer.

(3) If the Attorney General remands the case for further administrative proceedings, the Chief Administrative Hearing Officer or the Administrative Law Judge shall conduct further proceedings consistent with the Attorney General's order. Any subsequent final order of the Administrative Law Judge or the Chief Administrative Hearing Officer shall be subject to administrative review in accordance with § 68.54 and this section.

(d) *Final agency order.* (1) The Attorney General's order pursuant to paragraph (c) of this section (other than a remand as provided in paragraph (c)(3)) shall become the final agency order on the date of the Attorney General's order.

(2) If the Attorney General declines the Commissioner's request for referral of a case pursuant to paragraph (b) of this section, or does not issue a written notice of acceptance within sixty (60) days of the date of the Commissioner's request, then the final order of the Administrative Law Judge or the Chief Administrative Hearing Officer that was the subject of a referral pursuant to paragraph (b) shall become the final agency order on the day after that sixty (60) day period has expired.

§ 68.56 Judicial review of a final agency order in cases arising under section 274A or 274C.

A person or entity adversely affected by a final agency order may file, within forty-five (45) days after the date of the final agency order, a petition in the United States Court of Appeals for the appropriate circuit for review of the final agency order. Failure to request review by the Chief Administrative Hearing Officer of a final order by an Administrative Law Judge shall not prevent a party from seeking judicial review.

§ 68.57 Judicial review of the final agency order of an Administrative Law Judge in cases arising under section 274B.

Any person aggrieved by a final agency order issued under § 68.52(d) may, within sixty (60) days after entry of the order, seek review of the final agency order in the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business. If a final agency order issued under § 68.52(d) is not appealed, the Special Counsel (or, if the Special Counsel fails to act, the person filing the charge, other than the Immigration and Naturalization Service officer) may file a petition in the United States District Court for the district in which the violation that is the subject of the final agency order is alleged to have occurred, or in which the respondent resides or transacts business, requesting that the order be enforced.

§ 68.58 Filing of the official record.

Upon timely receipt of notification that an appeal has been taken, a certified copy of the record will be filed promptly with the appropriate United States Court.

Dated: January 8, 1999.

Janet Reno,

Attorney General.

[FR Doc. 99–1899 Filed 2–11–99; 8:45 am]

BILLING CODE 4410–30–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans prescribes interest assumptions for valuing benefits under terminating single-employer plans. This final rule amends the regulation to adopt interest assumptions for plans with valuation dates in March 1999.

EFFECTIVE DATE: March 1, 1999.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions for valuing plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974.

Among the actuarial assumptions prescribed in part 4044 are interest assumptions. These interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Two sets of interest assumptions are prescribed, one set for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. This amendment adds to appendix B to part 4044 the annuity and lump sum interest assumptions for valuing benefits in plans with valuation dates during March 1999.

For annuity benefits, the interest assumptions will be 5.30 percent for the first 20 years following the valuation date and 5.25 percent thereafter. The annuity interest assumptions represent a decrease (from those in effect for February 1999) of 0.10 percent for the first 20 years following the valuation date and are otherwise unchanged. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 4.00 percent for the period during which a benefit is in pay status and during any years preceding the benefit's placement in pay status. The lump sum interest assumptions are unchanged from those in effect for February 1999.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans with valuation dates during March 1999, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, a new entry is added to Table I, and Rate Set 65 is added to Table II, as set forth below. The introductory text of each table is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 4044—Interest Rates Used to Value Annuities and Lump Sums

TABLE I.—ANNUITY VALUATIONS

[This table sets forth, for each indicated calendar month, the interest rates (denoted by i_1, i_2, . . ., and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * *	*		*		*	*
March 1999	.0530	1–20	.0525	>20	N/A	N/A

TABLE II.—LUMP SUM VALUATIONS

[In using this table: (1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply; (2) For benefits for which the deferral period is y years (where y is an integer and $0 < y \leq n_1$), interest rate i^1 shall apply from the valuation date for a period of y years, and thereafter the immediate annuity rate shall apply; (3) For benefits for which the deferral period is y years (where y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply; (4) For benefits for which the deferral period is y years (where y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply.]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*		*
65	03–1–99	04–1–99	4.00	4.00	4.00	4.00	7	8

Issued in Washington, DC, on this 8th day of February 1999.

John Seal,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 99–3467 Filed 2–11–99; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R]

RIN 0720–AA30

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Individual Case Management

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule implements provisions of the 1993 National Defense Authorization Act which allows the Secretary of Defense to establish a case management program for CHAMPUS beneficiaries with extraordinary medical or psychological disorders and to allow such beneficiaries medical or psychological services, supplies, or durable medical equipment excluded by law or regulation as a TRICARE/CHAMPUS benefit. Under this program, waiver of benefit limits or exclusions to the basic TRICARE/CHAMPUS program may be authorized for beneficiaries when the provision of such services or supplies is cost effective and clinically appropriate, as compared to historical or projected TRICARE/CHAMPUS utilization of health care services. Such waivers will also provide families in crisis time for transition to other sources of support when TRICARE/CHAMPUS benefits have been exhausted. This case management program is designed to provide a cost-effective plan of care by targeting appropriate resources to meet the individual needs of the beneficiary.

DATED: March 15, 1999.

FOR FURTHER INFORMATION CONTACT: CDR Tracy Malone, TRICARE Management Activity, (703) 681–1745.

SUPPLEMENTARY INFORMATION: The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) supplements the availability of health care in military hospitals and clinics.

Statutory Authority

The case management program is based on the authority of 10 U.S.C. 1079(a)(17), which provides:

> The Secretary of Defense may establish a program for the individual case management of a person covered by this section or section 1086 of this title who has extraordinary medical or psychological disorders and, under such a program, may waive benefit limitations contained in paragraph (5) and (13) of this subsection or section 1077(b)(1) of this title and authorize the payment for comprehensive home health care services, supplies, and equipment if the Secretary determines that such a waiver is cost effective and appropriate.

Statutory and Legislative History

This provision was enacted in 1992 by Congress as section 704 of the National Defense Authorization Act for Fiscal Year 1993, Pub. L. 102–484, Oct. 23, 1992. It is substantively identical to a provision recommended by the Department of Defense in a report to Congress submitted a few months earlier by the Assistant Secretary of Defense (Health Affairs) and entitled, ''Report to Congress: Comprehensive Home Health Care as a CHAMPUS Benefit.'' The 1992 Report to Congress and statutory

enactment were the outgrowth of a series of legislative provisions dating back to 1985, when Congress directed the Department of Defense to ''conduct a pilot test project of providing home health care'' to certain CHAMPUS beneficiaries. Department of Defense Appropriations Act, 1986, PUb. L. 99–190, Section 8084. A similar provision was enacted a year later. Department of Defense Appropriations Act, 1987, Pub. L. 99–591, Section 9074.

In 1987, Congress directed the Department of Defense to establish a second, expanded demonstration project. The statute required DoD to ''conduct an expanded pilot project of providing home Health care as part of an individualized case-managed range of benefits that may reasonably deviate from otherwise payable types, amounts and levels of care'' for patients ''with exceptionally serious, long-range, costly and incapacitating physical or mental conditions.'' Department of Defense Appropriations Act, 1988, Pub. L. 100–202, Section 8071. A similar provision was enacted the following year. Department of Defense Appropriations act, 1989, Pub. L. 100–463, Section 8058. Based on these two demonstration projects, in 1991, the House and Senate Appropriations Committees directed the Department of Defense to investigate the possibility of including comprehensive home health care as a CHAMPUS benefit and report to Congress on its findings. H. Rept. No. 102–95, p. 89; S. Rept. No. 102–154, p. 37. The resulting report to Congress led to enactment of section 1079(a)(17), which is being implemented by this final rule.

In enacting this provision, Congress took another major step to direct and allow DoD to, in the words of the previous statute, ''reasonably deviate from'' the normal, restrictive statutory coverage for health services for patients with ''exceptionally serious, long-range, costly and incapacitating'' conditions. Pub. L. 100–202, Section 8071. A dominant statutory restriction affecting health care for such patients is the statutory exclusion of ''domiciliary or custodial care.'' 10 U.S.C. Section 1077(b)(1). This exclusion is made applicable to CHAMPUS by the introductory text of 10 U.S.C. Section 1079(a) and is implemented in its most important respect for CHAMPUS by regulations at 32 CFR sections 199.2 and 199.4(e)(12).

These regulations are well known and have been the subject of litigation from time to time in recent years, including a widely circulated, adverse District of Columbia Court of Appeals decision in 1987. *Barnett* v. *Weinberger,* 818 F.2d 953 (D.C. Cir. 1987); *see also Fiduk* v. *Montgomery,* No. 3:96–CV–409 RM (N.D. Ind., Mar. 27, 1998). The regulations are also well known to Congress, which has moved to create reasonable exceptions to the statutory and regulatory exclusion of custodial care.

This was, in fact, a primary reason Congress established the case management program by enacting section 1079(a)(17), and why the statute expressly authorizes a waiver of the custodial care exclusion section of 1077(b)(1) under the case management program when ''the Secretary determines that such a waiver is cost-effective and appropriate.'' This congressional purpose was explicitly stated in the explanation of the members of the Conference Committee that agreed to the final version of the section 1079(a)(17). The Conference Report explains:

> The conferees believe the case management program is the best approach to address the need of beneficiaries for whom regular CHAMPUS benefits are limited by the custodial care exclusion and other restrictions contained in the Law and CHAMPUS regulations.

H. Conf. Rept. 102–966, 102d Cong., 2d Sess., 719. The Department of Defense agrees with Congress that the case management program is the best approach to address the custodial care issue. Culminating a series of statutory enactments dating back to 1985, the case management program will allow CHAMPUS to assist beneficiaries who need long-term custodial care to transition to programs, which, unlike CHAMPUS, provide long-term custodial care. This was a principal objective of Congress in enacting the case management program and is a principal focus of the regulatory implementation of the program.

Case Management

Case management is used in many TRICARE/CHAMPUS settings to organize acute and outpatient health care services. This final rule focuses specifically on the use of case management to address complex health care needs of catastrophically ill or injured beneficiaries, It offers a system for organizing multidisciplinary services often required for management of extraordinary medical or psychological disorders and provides a bridge between acute and long term care services generally excluded under TRICARE/CHAMPUS. It is designed to improve quality of care, control costs, and support patients and families through catastrophic medical events.

The TRICARE/CHAMPUS individual case management program seeks to achieve cost effective quality health care by considering alternatives to current TRICARE/CHAMPUS benefit limitations or exclusions that, when provided, are cost effective and clinically appropriate. Section 199.4 provides, as a case management related benefit, authority for services or supplies that would otherwise be excluded as non-medical or duplicate durable equipment, custodial care, or domiciliary care. Waivers of benefit limits will be approved and coordinated by case managers and may include, but are not limited to, services or supplies such as home healthcare, medical supplies, back-up durable medical equipment, extended skilled nursing care and home health aides. Services or supplies provided in the home by other than already recognized providers of care must fall under the auspices of a home health care agency which has been either authorized by Medicare or licensed by the State in which it operates. Providers of other services as a result of such waivers must be licensed or certified by the prevailing authority for that service. Section 199.2 revises the definition of ''treatment plan'' to include inpatient and outpatient care and adds definitions for waiver of benefit limits, case management, case manager, case management multidisciplinary team, extraordinary condition, and primary caregiver.

Eligibility

Although participation in the TRICARE/CHAMPUS case management program is voluntary, certain conditions must exist for a beneficiary to be eligible for participation. These conditions are: (1) The presence of an extraordinary medical condition which has resulted in high utilization of TRICARE/CHAMPUS resources, (2) the cost effectiveness of providing the alternative services or supplies, (3) the willingness of the beneficiary to participate, and (4) a competent patient or the presence of a primary caregiver in the home when the services provided include home health care.

Custodial Care

We expect patients and their families will require varying levels of support and time to stabilize following a catastrophic illness. Case managers will determine on a case-by-case basis the need and appropriate amount of time for temporary waivers to custodial care exclusions. Waivers to custodial care exclusions will be subject to a lifetime maximum of 365 days and must be *cost effective* when compared to available covered services. Such waivers are

designed to allow families sufficient opportunity for transition to alternative funding sources and services.

Prior Authorization

Prior authorization from case managers will be required before the delivery of any case managed benefits. Because eligibility for a waiver of benefit limits/exclusions is based on an in depth assessment of medical needs, as well as the cost effectiveness and clinical appropriateness of alternate services, any services provided absent prior authorization will not be covered by TRICARE/CHAMPUS. Retrospective requests for coverage under this program will not be authorized.

Military Health System Resource Management

To ensure cost efficient as well as cost-effective use of resources, the Department of Defense requires establishment of case management programs, as described in this rule, in all TRICARE/CHAMPUS managed care support contracts. Managed care support contractors will be authorized to make available case management services to Military Medical Treatment Facilities (MTFs). MTFs will be provided the opportunity to refer potential candidates to the appropriate TRICARE/CHAMPUS case manager. Where possible, MTFs will provide care and services or supplies in support of regional case management programs.

Beneficiary Acknowledgment

Case management is a collaborative process involving the case manager, beneficiary, primary caregiver, and professional health care providers. For case management to be successful, the beneficiary and primary caregiver must participate in the process and be aware of and agree with the requirements of the program. To document the understanding of their roles, rights and responsibilities, a standard acknowledgment, signed by the beneficiary (or representative) and the primary caregiver, will be required prior to the start of case management services.

Denial/Appeals Process

Beneficiaries and/or providers who dispute a determination regarding medical appropriateness or necessity of proposed services or treatment under the case management program might appeal those decisions. The existing *Appeal and Hearing Procedures* outlined in 32 CFR section 199.10 will be used for these cases.

CHAMPUS HHC/HHC–CM Demonstration

The 1986 Home Health Care and 1988 Home Health Care-Case Management Demonstration projects were developed to test whether case management, coupled with home healthcare benefits, could reduce medical costs and improve services to CHAMPUS beneficiaries. Under the 1986 demonstration, case management services were limited to beneficiaries who, in the absence of case managed home health care, would have remained hospitalized. The 1988 program was less restrictive and no longer required case management services only as a substitute for continued hospitalization. The General Accounting Office (GAO) addressed the effectiveness of methods for identifying potentially eligible beneficiaries and establishing the clinical appropriateness and cost-effectiveness of services provided. In its report, ''DEFENSE HEALTH CARE: Further Testing and Evaluation of Case Managed Home Care Is Needed,'' the GAO identified a need for stronger cost controls and improved targeting of potential candidates before implementation of a permanent case management program under CHAMPUS. With the GAO's recommendations and observations in mind, the Department is establishing this TRICARE/CHAMPUS case management program which provides clinically appropriate, cost effective alternatives to covered services, organizes complex or multidisciplinary services, and allows families a transition period to arrange for long term care not provided under TRICARE/CHAMPUS. The organized delivery of services for these patients is designed to improve continuity and quality of care, lower overall costs to the Department, and result in better quality of life.

Public Comments

The proposed rule was published in the **Federal Register** Thursday, January 4, 1996, (61 FR 339). Significant effort has been undetaken in the ensuing months to resolve several difficult issues, primarily relating to long term care. Providing a reasonable safety net for beneficiaries who require custodial or long-term services continues to be a difficult challenge for the health care industry. With this management program, the Department is attempting to strike a delicate balance between its primary mission of medical readiness and appropriate support for medical system beneficiaries when they are most vulnerable.

We received seven comment letters, all of which were from providers and provider associations. Several commentors were quite detailed, providing helpful insights and the benefit of many years' experience. We thank those who took the time to provide suggestions, many of which have been incorporated into this final rule. Significant items raised by commentors and our analysis of the comments are summarized below.

1. Access to Case Management Benefits

Several commentors expressed concern that the proposed rule limited case management services to catastrophically ill or injured patients and placed undue emphasis on the use of inpatient acute services as a prerequisite for this program. They point out that case management is widely used in private sector health plans to enhance the cost effective delivery of quality care for a wide range of patients, not just those facing catastrophic events. We are aware that case management has many applications, some of which are already required and used by the Department in both military medical treatment facilities and by TRICARE Managed Care Support contractors. The broad application of case management in these settings requires no new regulatory authority. This final rule specifically addresses the unique circumstances of catastrophic illness and provides new authority to waive benefit limitations/exclusions when there are more cost effective, clinically appropriate alternatives to higher intensity covered services. We agree that use of impatient services as a prerequisite for participation in this case management program inappropriately excludes opportunities for better management of certain complex of catastrophic illnesses. We have clarified eligibility requirements to extend case management benefits to individuals who have demonstrated extraordinarily high TRICARE/CHAMPUS resource utilization, regardless of whether or not treatment has included an acute inpatient stay.

2. Quality and Outcomes

One provider expressed concern that there was insufficient emphasis on quality of care, quality of life, and outcomes in the proposed rule. While cost effectiveness is an important requirement for application of the new waiver authority described in this rule, it does not take precedence over quality of care. Proposed treatment provided as part of this program must be clinically appropriate, high quality *and* cost effective. In addition to outcome measures already used by DoD, specific

performance measures for this program will be developed and included in more detailed operational guidance.

3. Primary Cargiver

We received many comments on our requirement for the presence of a primary caregiver as a condition for participation in this program. This requirement was based on the idea that individuals who required a monitored or controlled environment could not safely move outside institutional care without the presence of a primary caregiver, most likely a family member. We reasoned that primary caregivers would be essential components in this transfer, not only to assure the patient's safety, but also to participate in the effective implementation of a case management treatment plan. Commentors presented several scenarios in which individuals who would benefit from this program may not have a primary caregiver as described in the proposed rule. We agree with these comments and have modified the eligibility requirement to state there must be a patient capable of self-support or be assisted by a primary caregiver. We have retained the requirement for presence of a primary caregiver when the program includes a waiver for provision of custodial care services in the home.

4. Program Operation

We received numerous detailed comments and suggestions about specific operation of the proposed case management program, including requirements and contents for treatment plans, reporting requirements and methods for transition from case management services, These are detailed program elements, which will be included in operational policies following publication of this rule.

5. Case Management for Extraordinary Psychological Illnesses

Several commentors expressed concern that the proposed rule did not seem to allow exceptions to benefit exclusions for treatment of catastrophic physiological illness. This is not the case. The rule proposes case management services and associated appropriate relief from otherwise excluded services for both medical and psychological disorders. Exceptions to benefit limitations must be medically and/or psychologically appropriate and must be cost effective when compared to available covered services.

6. Qualifications of Case Managers

We received comments from a provider association regarding our requirement that case managers be either registered nurses or licensed social workers with at least two-year case management experience. The commentor believed this requirement should be broadened to allow other professional specialties, such as physicians or psychologists, to act as case managers. Although it is not typical practice for health plans to employ physicians, psychologists, or other similarly trained professionals as case managers; we have no objection to their acting in this capacity. Accordingly, we have modified the case manager definition to allow physicians and psychologists with at least two years experience in case management to act as case managers for TRICARE programs. This rule focuses on care of catastrophic illness or injury that requires both basic knowledge of medical and psychological disorders and experience in coordinating services for seriously ill beneficiaries. Because of this, we do not believe it appropriate to reduce professional qualifications from those proposed.

Regulatory Procedures

Executive Order (EO) 12866 requires that a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one which would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This rule is has been reviewed and approved by OMB and under EO 12866. In addition, we certify that this rule will not significantly affect a substantial number of small entities.

Paperwork Reduction Act

This rule, as written, imposes no burden as defined by the Paperwork Reduction Act of 1995. If however, any program implemented under this rule causes such a burden to be imposed, approval therefore will be sought of the Office of Management and Budget in accordance with the Act, prior to implementation.

List of Subjects in 32 CFR Part 199

Claims, handicapped, health insurance, and military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. Chapter 55.

2. Section 199.2(b) is amended by adding new definitions in alphabetical order:

§ 199.2 Definitions.

* * * * *

Case management. Case management is a collaborative process which assesses, plans, implements, coordinates, monitors, and evaluates the options and services required to meet an individual's health needs, using communication and available resources to promote quality, cost effective outcomes.

Case managers. A licensed registered nurse, licensed clinical social worker, licensed psychologist or licensed physician who has a minimum of two (2) years case management experience.

Extraordinary condition. A complex clinical condition, which resulted, or is expected to result, in extraordinary TRICARE/CHAMPUS costs or utilization, based on thresholds established by the Director, OCHAMPUS, or designee.

Primary caregiver. An individual who renders to a beneficiary services to support the essentials of daily living (as defined in § 199.2) and specific services essential to the safe management of the beneficiary's condition.

Waiver of benefit limits. Extension of current benefit limitations under the Case Management Program, of medical care, services, and/or equipment, not otherwise a benefit under the TRICARE/CHAMPUS program.

3. Section 199.4 is amended by adding new paragraphs (e)(20) and (i) as follows:

§ 199.4 Basic program benefits.

* * * * *

(e) *Special benefit information.*

* * *

(20) *Case management services.* As part of case management for beneficiaries with complex medical or psychological conditions, payment for services or supplies not otherwise covered by the basic CHAMPUS/TRICARE program may be authorized when they are provided in accordance with § 199.4(i). Waiver of benefit limits/exclusions to the basic CHAMPUS/TRICARE program may be cost shared where it is demonstrated that the absence of such services would result in the exacerbation of an existing extraordinary condition, as defined in § 199.2, to the extent that frequent or

extensive services are required; and such services are a cost effective alternative to the Basic CHAMPUS program.

* * * * *

(i) *Case management program.* (1) *In general.* Case management, as it applies to this program, provides a collaborative process among the case manager, beneficiary, primary caregiver, professional health care providers and funding sources to meet the medical needs of an individual with an extraordinary condition. It is designed to promote quality and cost-effective outcomes through assessment, planning, implementing, monitoring and evaluating the options and services required. Payment for services or supplies limited or not otherwise covered by the basic TRICARE/CHAMPUS program may be authorized when they are provided in accordance with paragraph (i) of this section. Waiver of benefit limits/exclusions may be cost-shared where it is demonstrated that the absence of such services would result in the exacerbation of an existing extraordinary condition, as defined in § 199.2, to the extent that such services are a cost-effective alternative to the basic TRICARE/CHAMPUS program.

(2) *Applicability of case management program.* A CHAMPUS eligible beneficiary may participate in the case management program if he/she has an extraordinary condition, which is disabling and requires extensive utilization of TRICARE resources. The medical or psychological condition must also:

(i) Be contained in the latest revision of the International Classification of Diseases Clinical Modification, or the Diagnostic and Statistical Manual of Mental Disorders;

(ii) Meet at least one of the following:

(A) Demonstrate a prior history of high CHAMPUS costs in the year immediately preceding eligibility for the case management program; or

(B) Require clinically appropriate services or supplies from multiple providers to address an extraordinary condition; and

(iii) Can be treated more appropriately and cost effectively at a less intensive level of care.

(3) *Prior authorization required.* Services or supplies allowable as a benefit exception under this Section shall be cost-shared only when a beneficiary's entire treatment has received prior authorization through an individual case management program.

(4) *Cost effective requirement.* Treatment must be determined to be cost effective by comparison to alternative treatment that would otherwise be required or when compared to existing reimbursement methodology. Treatment must meet the requirements of appropriate medical care as defined in § 199.2.

(5) *Limited waiver of exclusions and limitations.* Limited waivers of exclusions and limitations normally applicable to the basic program may be granted for specific services or supplies only when a beneficiary's entire treatment has received prior authorization through the individual case management program described in paragraph (i) of this section. The Director, OCHAMPUS may grant a patient-specific waiver of benefit limits for services or supplies in the following categories, subject to the waiver requirements of this section.

(i) *Durable equipment.* The cost of a device or apparatus which does not qualify as Durable Medical Equipment (as defined in § 199.2) or back-up durable medical equipment may be shared when determined by the Director, OCHAMPUS to be cost-effective and clinically appropriate.

(ii) *Custodial care.* The cost of services or supplies rendered to a beneficiary that would otherwise be excluded as custodial care (as defined in § 199.2) may be cost-shared for a maximum lifetime period of 365 days when determined by the Director, OCHAMPUS, to be cost effective and clinically appropriate. To qualify for a waiver of benefit limits of custodial care, the patient must meet all eligibility requirements of paragraph (i) of this section, including that the absence of the waived services would result in the exacerbation of an existing extraordinary condition. In addition:

(A) The proposed treatment must be cost effective and clinically appropriate as determined by the individual case manager. For example, the treatment would be determined to be cost effective by comparison to alternative care that would otherwise be required or when compared to existing reimbursement methodology.

(B) For patients receiving care at home, there must be a primary caregiver or the patient is capable of self-support.

(iii) *Domiciliary care.* The cost of services or supplies rendered to be a beneficiary what would otherwise be excluded as domiciliary care (as defined in § 199.2) may be shared when determined by the Director, OCHAMPUS to be cost effective and clinically appropriate. Waivers for domiciliary care are subject to the same requirements as paragraphs (i)(5)(ii) of this section.

(iv) *In home services.* The cost of the following in-home services may be shared when determined by the Director, OCHAMPUS to be cost effective and clinically appropriate: nursing care, physical, occupational, speech therapy, medical social services, intermittent or part-time services of a home health aide, beneficiary transportation required for treatment plan implementation, and training for the beneficiary and primary caregiver sufficient to allow them to assume all feasible responsibility for the care of the beneficiary that will facilitate movement of the beneficiary to the least resource-intensive, clinically appropriate setting. (Qualifications for home health aides shall be based on the standards at 42 CFR 848.36.)

(6) *Case management acknowledgment.* The beneficiary, or representative, and the primary caregiver shall sign a case management acknowledgment as a prerequisite to prior authorization of case management services. The acknowledgment shall include, in part, all of the following provisions:

(i) The right to participate fully in the development and ongoing assessment of the treatment;

(ii) That all health care services for which TRICARE/CHAMPUS cost sharing is sought shall be authorized by the case manager prior to their delivery;

(iii) That there are limitations in scope and duration of the planned case management treatment, including provisions to transition to other arrangements; and

(iv) The conditions under which case management services are provided, including the requirement that the services must be cost effective and clinically appropriate;

(v) That a beneficiary's participation in the case management program shall be discontinued for any of the following reasons:

(A) The loss of TRICARE/CHAMPUS eligibility;

(B) A determination that the services or supplies provided are not cost effective or clinically appropriate;

(C) The beneficiary, or representative, and/or primary caregiver, terminates participation in writing;

(D) The beneficiary and/or primary caregiver's failure to comply with requirements in this paragraph (i); or

(E) A determination that the beneficiary's condition no longer meets the requirements of participation as described in paragraph (i) of this section.

(7) *Other administrative requirements.* (i) Qualified providers of services or items not covered under the basic

program, or who are not otherwise eligible for TRICARE/CHAMPUS authorized status, may be authorized for a time-limited period when such authorization is essential to implement the planned treatment under case management. Such providers must not be excluded or suspended as a CHAMPUS provider, must hold Medicare or state certification or licensure appropriate to the service, and must agree to participate on all claims related to the case management treatment.

(ii) Retrospective requests for authorization of waiver of benefit limits/exclusions will not be considered. Authorization of waiver of benefit limits/exclusions is allowed only after all other options for services or supplies have been considered and either appropriately utilized or determined to be clinically inappropriate and/or not cost-effective.

(iii) Experimental or investigational treatment or procedures shall not be cost-shared as an exception to standard benefits under this part.

(iv) TRICARE/CHAMPUS case management services may be provided by contractors designated by the Director, OCHAMPUS.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–3441 Filed 2–11–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–001]

RIN 2115–AA97

Safety Zone: Shlofmitz BatMitzvah Fireworks, Hudson River, Manhattan, New York

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Schlofmitz BatMitzvah Fireworks program located on the Hudson River, Manhattan, New York. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic on a portion of the Hudson River.

DATES: This rule is effective from 8:00 p.m. until 9:30 p.m., on Saturday, March 20, 1999. There is no rain date for this event.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4193.

FOR FURTHER INFORMATION CONTACT: Lieutenant J.P. Lopez, Waterways Oversight Branch, Coast Guard Activities New York, at (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing an NPRM and for making this regulation effective less than 30 days after **Federal Register** publication. Due to the date the Application for Approval of Marine Event was received, there was insufficient time to draft and publish an NPRM. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to close a portion of the waterway and protect the maritime public from the hazards associated with this fireworks display.

Background and Purpose

On January 8, 1999, Bay Fireworks submitted an application to hold a fireworks program on the waters of the Hudson River. The fireworks program is being sponsored by Dr. Richard Shlofmitz. This regulation establishes a safety zone in all waters of the Hudson River within a 360 yard radius of the fireworks barge located in approximate position 40°44′49″N 074°01′02″W (NAD 1983), approximately 500 yards west of Pier 60, Manhattan, New York. The safety zone is in effect from 8:00 p.m. until 9:30 p.m. on Saturday, March 20, 1999. There is no rain date for this event. The safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the eastern 150 yards of the 850-yard wide Hudson River during the event. The Captain of the Port does not anticipate any negative impact on commercial traffic due to this event. Additionally, vessels are not precluded from mooring at or getting underway from Piers 59–62 or from the Piers at Castle Point, New Jersey. Public notifications will be made prior to the event via local notice to mariners, and marine information broadcasts.

Regulatory Evaluation

This final 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. It has not been reviewed by the Office of Management and Budget 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 final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This funding is based on the minimal time that vessels will be restricted from the area, that vessels are not precluded from getting underway, or mooring at, Piers 59–62 and the Piers at Castle Point, New Jersey, that vessels may safely transit to the east of the zone, and extensive advance notifications which will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include 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.

For reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Coast Guard must consider whether this rule will result in an annual

expenditure by state, local, and tribal governments, in the aggregate of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected. No state, local, or tribal government entities will be effected by this rule, so this rule will not result in annual or aggregate costs of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

Environment

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

List of Subjects in 33 CFR Part 165

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

Regulation

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

PART 165—[AMENDED]

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

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

2. Add temporary § 165.T01–001 to read as follows:

§ 165.T01–001 Safety Zone: Shlofmitz Batmitzvah Fireworks, Hudson River, Manhattan, New York

(a) *Location.* The following area is a safety zone: all waters of the Hudson River within a 360 yard radius of the fireworks barge in approximate position 40°44′49″N 074°01′02″W (NAD 1983), approximately 500 yards west of Pier 60, Manhattan, New York.

(b) *Effective period.* This section is effective from 8:00 p.m. until 9:30 p.m. on Saturday, March 20, 1999. There is no rain date for this event.

(c) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: January 27, 1999.

R.E. Bennis,

Captain, U.S. Coast Guard,

Captain of the Port, New York.

[FR Doc. 99–3513 Filed 2–11–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 20

RIN 2900–AJ75

Board of Veterans' Appeals: Rules of Practice—Notification of Representatives in Connection With Motions for Revision of Decisions on Grounds of Clear and Unmistakable Error

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: This document amends the Rules of Practice of the Board of Veterans' Appeals (Board) relating to challenges to Board decisions on the grounds of ''clear and unmistakable error'' (CUE). The amendment provides for notification of the party's representative and an opportunity for a response when the Board receives a request for CUE review.

DATES: *Effective Date:* This amendment is effective February 12, 1999. Comments must be submitted by March 15, 1999.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AJ75.'' All written comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Chief Counsel, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 565–5978.

SUPPLEMENTARY INFORMATION: The Board of Veterans' Appeals (Board) is an administrative body that decides appeals from denials of claims for veterans' benefits. There are currently 60 Board members, who decide 35,000 to 40,000 such appeals per year.

On January 13, 1999, the Department of Veterans Affairs (VA) published a final rule in the **Federal Register**, 64 FR 2134, implementing the provisions of section 1(b) of Pub. L. No. 105–111 (Nov. 21, 1997), which permits challenges to decisions of the Board on the grounds of ''clear and unmistakable error'' (CUE).

Historically, 90 percent of appellants at the Board are represented. Approximately 75 percent of all appellants are represented by ''recognized organizations''—e.g., The American Legion, Disabled American Veterans, Veterans of Foreign Wars of the United States—with offices at the Board's principal offices in Washington, DC. Even though CUE motions under our rules relate, by definition, to prior Board decisions and therefore are likely to be made by represented parties, we believe that not all represented parties will consult with their representatives prior to filing such a motion. Further, we are concerned that not all such parties will take the time, or have the expertise, to familiarize themselves thoroughly with the rules relating to these motions.

Familiarity with the CUE rules is important because of the finality of a Board decision on a CUE motion. As published, the new rules relating to CUE motions incorporate the jurisprudence of the Court of Veterans Appeals. One of the most important aspects is that there is only one challenge on the grounds of CUE available with respect to a particular Board decision on a particular issue: Once the Board has ruled and once the appellate procedures have run their course, a request for revision of the same decision on the grounds of CUE will no longer be considered. *Russell* v. *Principi,* 3 Vet. App. 310, 315 (1992); 38 CFR 20.1409(c); *see also Allin* v. *Brown,* 10 Vet. App. 55, 57 (1997) (where court previously determined that there was no CUE in 1971 regional office decision, the question is no longer open for review).

A party's consultation with his or her representative is important because of the finality of a Board decision on a CUE motion. A representative can help in two ways: first, to make the best possible argument to the Board on a

CUE motion; and, second, to advise the party that, under the circumstances, it might be better to withdraw the motion until he or she has had a chance to put together a better argument.

Accordingly, to encourage representatives' participation in CUE motions, we have amended Rule 1405 (relating to disposition of CUE motions) to provide that, when the Board receives a CUE motion from a party, and that party's file reveals that he or she is represented—by an attorney, an agent, an individual or a recognized organization—the Board will take steps to notify the representative that the motion has been filed. Specifically, the Board will provide a copy of the motion to the representative before assigning the motion to a Member or panel. The representative will have 30 days to file any relevant response, including a request that the representative be permitted to review the claims file prior to filing a further response.

We believe that 30 days is sufficient time for an attorney or other representative to contact the party and determine what, if any, additional steps may be necessary. Since a request for CUE review may be withdrawn at any time prior to the issuance of a decision on the motion without prejudice to refiling, 38 CFR 20.1404(f), if a representative believed that more time was necessary, withdrawing the motion is a viable alternative. Particularly in light of this alternative, we do not believe that it is necessary or useful to the orderly administration of justice to permit potentially unlimited extensions of time on these motions.

Notwithstanding our concern with a timely response, we understand that a representative may wish to review the record—i.e., the claims file—prior to making a recommendation to the moving party. Accordingly, Rule 1405(a)(2) provides that, if the representative makes an appropriate request prior to the expiration of time allowed, the Board will make arrangements for the representative to review the claims file prior to filing a further response, and permit the representative a reasonable time after making the file available to file a further response.

This interim final rule concerns rules of agency procedure and practice. Further, it provides additional process favorable to affected individuals. Accordingly, under the provisions of 5 U.S.C. 553, we are dispensing with prior notice and comment and a delayed effective date.

The Secretary hereby certifies that this rule does 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 rule affects individuals and does not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Claims, Lawyers, Legal services, Veterans, Authority delegations (government agencies).

Approved: February 5, 1999

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 20 is amended as set forth below:

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

1. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a).

2. In subpart O, § 20.1405(a) is revised to read as follows:

§ 20.1405 Rule 1405. Disposition.

(a) *Docketing and assignment; notification of representative.*—(1) *General.* Motions under this subpart will be docketed in the order received and will be assigned in accordance with § 19.3 of this title (relating to assignment of proceedings). Where an appeal is pending on the same underlying issue at the time the motion is received, the motion and the appeal may be consolidated under the same docket number and disposed of as part of the same proceeding. A motion may not be assigned to any Member who participated in the decision that is the subject of the motion. If a motion is assigned to a panel, the decision will be by a majority vote of the panel Members.

(2) *Notification of representative.* When the Board receives a motion under this subpart from an individual whose claims file indicates that he or she is represented, the Board shall provide a copy of the motion to the representative before assigning the motion to a Member or panel. Within 30 days after the date on which the Board provides a copy of the motion to the representative, the representative may file a relevant response, including a request to review the claims file prior to filing a further response. Upon request made within the time allowed under this paragraph, the Board shall arrange for the representative to have the opportunity to review the claims file, and shall permit the representative a reasonable time after making the file available to file a further response.

* * * * *

[FR Doc. 99–3565 Filed 2–11–99; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IA, KS, NE–066–1066; FRL–6223–9]

Approval and Promulgation of Air Quality Implementation Plans; Revised Format for Materials Being Incorporated by Reference for Iowa, Kansas, and Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: The EPA is revising the format of 40 CFR part 52 for materials submitted by the states of Iowa, Kansas, and Nebraska that are incorporated by reference into their State Implementation Plans (SIP). The regulations affected by this format change have all been previously submitted by the state agencies and approved by the EPA.

This format revision will affect the ''Identification of Plan'' sections of 40 CFR part 52, as well as the format of the SIP materials that will be available for public inspection at the Office of Federal Register (OFR), the Air and Radiation Docket and Information Center located in Waterside Mall, Washington, DC, and the Region VII Office. The sections of 40 CFR part 52 pertaining to provisions promulgated by the EPA or state-submitted materials not subject to incorporation by reference (IBR) review remain unchanged.

EFFECTIVE DATE: This action is effective February 12, 1999.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region VII, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; Office of Air and Radiation, Docket and Information Center (Air Docket), EPA, 401 M Street, S.W., Room M1500, Washington, DC 20460; and Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Edward West, Regional SIP Coordinator

at the above Region VII address or at (913) 551–7330.

SUPPLEMENTARY INFORMATION: The supplementary information is organized in the following order:

Description of a SIP.
How the EPA enforces SIPs.
How the state and the EPA updates the SIP.
How the EPA compiles the SIPs.
How the EPA organizes the SIP compilation.
Where you can find a copy of the SIP compilation.
The format of the new Identification of Plan section.
When a SIP revision becomes Federally enforceable.
The historical record of SIP revision approvals.
What the EPA is doing in this action.
How this document complies with the Federal administrative requirements for rulemaking.

Description of a SIP

Each state has a SIP containing the control measures and strategies used to attain and maintain the National Ambient Air Quality Standards (NAAQS). The SIP is extensive, containing such elements as air pollution control regulations, emission inventories, monitoring network, attainment demonstrations, and enforcement mechanisms.

How the EPA Enforces SIPs

Each state must formally adopt the control measures and strategies in the SIP after the public has had an opportunity to comment on them. They are then submitted to the EPA as SIP revisions on which the EPA must formally act.

Once these control measures and strategies are approved by the EPA, after notice and comment, they are incorporated into the Federally approved SIP and are identified in part 52 (Approval and Promulgation of Implementation Plans), Title 40 of the Code of Federal Regulations (40 CFR part 52). The actual state regulations approved by the EPA are not reproduced in their entirety in 40 CFR part 52, but are ''incorporated by reference,'' which means that the EPA has approved a given state regulation with a specific effective date. This format allows both the EPA and the public to know which measures are contained in a given SIP and ensures that the state is enforcing the regulations. It also allows the EPA and the public to take enforcement action, should a state not enforce its SIP-approved regulations.

How the State and the EPA Updates the SIP

The SIP is a living document which the state can revise as necessary to address the unique air pollution problems in the state. Therefore, the EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), the EPA revised the procedures for incorporating by reference Federally approved SIPs, as a result of consultations between the EPA and OFR.

The EPA began the process of developing: (1) A revised SIP document for each state that would be incorporated by reference under the provisions of 1 CFR part 51; (2) a revised mechanism for announcing the EPA approval of revisions to an applicable SIP and updating both the IBR document and the CFR; and (3) a revised format of the ''Identification of Plan'' sections for each applicable subpart to reflect these revised IBR procedures.

The description of the revised SIP document, IBR procedures, and ''Identification of Plan'' format are discussed in further detail in the May 22, 1997, **Federal Register** document.

How the EPA Compiles the SIPs

The Federally approved regulations and source-specific permits submitted by each state agency have been organized by the EPA into a SIP compilation that contains the updated regulations and source-specific permits approved by the EPA through previous rulemaking actions in the **Federal Register**. The compilations are contained in three-ring binders and will be updated, primarily on an annual basis. The nonregulatory provisions are available by contacting Ed West at the Regional Office.

How the EPA Organizes the SIP Compilation

Each compilation contains three parts. Part 1 contains the regulations, Part 2 contains the source-specific requirements that have been approved as part of the SIP, and part 3 contains nonregulatory provisions that have been EPA-approved. Each part consists of a table of identifying information for each regulation, each source-specific permit, and each nonregulatory provision. The effective dates in the tables indicate the date of the most recent revision of each regulation. The table of identifying information in the compilation corresponds to the table of contents published in 40 CFR part 52 for these states. The regional EPA offices have the primary responsibility for ensuring accuracy and updating the compilations.

Where You Can Find a Copy of the SIP Compilation

The Region VII EPA Office developed and will maintain the compilation for Iowa, Kansas, and Nebraska. A copy of the full text of each state's current compilation will also be maintained at the OFR and the EPA's Air Docket and Information Center.

The Format of the New Identification of Plan Section

In order to better serve the public, the EPA revised the organization of the ''Identification of Plan'' section and included additional information to clarify the enforceable elements of the SIP.

The revised Identification of Plan section contains five subsections:

1. Purpose and scope.
2. Incorporation by reference.
3. EPA-approved regulations.
4. EPA-approved source-specific permits.
5. EPA-approved nonregulatory provisions such as transportation control measures, statutory provisions, control strategies, monitoring networks, etc.

When a SIP Revision Becomes Federally Enforceable

All revisions to the applicable SIP become Federally enforceable as of the effective date of the revisions to paragraphs (c), (d), or (e) of the applicable Identification of Plan section found in each subpart of 40 CFR part 52.

The Historical Record of SIP Revision Approvals

To facilitate enforcement of previously approved SIP provisions and provide a smooth transition to the new SIP processing system, the EPA retains the original Identification of Plan section, previously appearing in the CFR as the first or second section of part 52 for each state subpart. After an initial two-year period, the EPA will review its experience with the new system and enforceability of previously approved SIP measures and will decide whether or not to retain the Identification of Plan appendices for some further period.

What the EPA is Doing in This Action

Today's rule constitutes a ''housekeeping'' exercise to ensure that all revisions to the state programs that have occurred are accurately reflected in 40 CFR Part 52. State SIP revisions are controlled by the EPA regulations at 40

CFR part 51. When the EPA receives a formal SIP revision request, the Agency must publish the proposed revision in the **Federal Register** and provide for public comment before approval.

The EPA has determined that today's rule falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved state programs.

Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment is ''unnecessary'' and ''contrary to the public interest'' since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations.

How This Document Complies With the Federal Administrative Requirements for Rulemaking

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled ''Regulatory Planning and Review.''

B. E.O. 12875

Under E.O. 12875, the EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by those governments, or the EPA consults with those governments. If the EPA complies by consulting, E.O. 12875 requires the EPA to provide to the OMB a description of the extent of the EPA's prior consultation with representatives of affected state, local, and tribal governments; the nature of their concerns; copies of any written communications from the governments; and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires the EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on state, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. E.O. 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. E.O. 13084

Under E.O. 13084, the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or the EPA consults with those governments. If the EPA complies by consulting, E.O. 13084 requires the EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires the EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and Subchapter I, Part D of the Clean Air Act (CAA) do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or

tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

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

H. Petitions for Judicial Review

Under Section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 13, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Dated: December 24, 1998.

William Rice,

Acting Regional Administrator, Region VII.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority for citation for Part 52 continues to read as follows:

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

Subpart Q—Iowa

§ 52.820 [Redesignated as § 58.824]

2. Section 52.820 is redesignated as § 52.824 and the section heading and paragraph (a) are revised to read as follows:

§ 52.824 Original identification of plan section.

(a) This section identifies the original ''Air Implementation Plan for the State of Iowa'' and all revisions submitted by Iowa that were Federally approved prior to July 1, 1998.

* * * * *

3. A new § 52.820 is added to read as follows:

§ 52.820 Identification of plan.

(a) Purpose and scope. This section sets forth the applicable SIP for Iowa under section 110 of the CAA, 42 U.S.C. 7401, and 40 CFR Part 51 to meet NAAQS.

(b) Incorporation by reference.

(1) Material listed in paragraphs (c), (d), and (e) of this section with an EPA approval date prior to July 1, 1998, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c), (d), and (e) of this section with the EPA approval dates after July 1, 1998, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region VII certifies that the rules/regulations provided by the EPA in the SIP compilation at the addresses in paragraph (b)(3) are an exact duplicate of the officially promulgated state rules/regulations which have been approved as part of the SIP as of July 1, 1998.

(3) Copies of the materials incorporated by reference may be inspected at the Environmental Protection Agency, Region VII, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; the Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC; or at the EPA Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC. 20460.

(c) EPA-approved regulations.

EPA—APPROVED IOWA REGULATIONS

Iowa citation	Title	State effective date	EPA approval date	Comments
Iowa Department of Natural Resources Environmental Protection Commission [567]				
Chapter 20—Scope of Title-Definitions-Forms-Rule of Practice				
567–20.1	Scope of Title	3/14/90	6/29/90, 55 FR 26690.	
567–20.2	Definitions	9/11/96, 4/9/97	6/25/98, 63 FR 34601.	
567–20.3	Air Quality Forms Generally	3/14/90,	6/29/90, 55 FR 26690.	
Chapter 21—Compliance				
567–21.1	Compliance Schedule	3/14/90	6/29/90, 55 FR 26690.	
567–21.2	Variances	3/14/90	6/29/90, 55 FR 26690.	
567–21.3	Emission Reduction Program	3/14/90	6/29/90, 55 FR 26690.	
567–21.4	Circumvention of Rules	3/14/90	6/29/90, 55 FR 26690.	
567–21.5	Evidence Used in Establishing That a Violation Has or Is Occurring.	11/16/94	10/30/95, 60 FR 55198.	
Chapter 22—Controlling Pollution				
567–22.1	Permits Required for New or Existing Stationary Sources.	3/14/90	6/29/90, 55 FR 26690.	
567–22.2	Processing Permit Applications	4/9/97	6/25/98, 63 FR 34600.	
567–22.3	Issuing Permits	2/24/93	5/12/93, 58 FR 27939	Subrule 22.3 (6) has not been approved as part of the SIP.

EPA—APPROVED IOWA REGULATIONS—Continued

Iowa citation	Title	State effective date	EPA approval date	Comments
567–22.4	Special Requirements for Major Stationary Sources Located in Areas Designated Attainment or Unclassified (PSD).	7/12/95	10/23/97, 62 FR 55172.	
567–22.5	Special Requirements for Nonattainment Areas.	3/20/96	10/23/97, 62 FR 55172.	
567–22.8	Permit by Rule	5/8/96	6/25/98, 63 FR 34600.	
567–22.105	Title V Permit Applications	11/16/94	10/30/95, 60 FR 55198	Only subparagraph (2)i(5) is included in the SIP.
567–22.200	Definitions for Voluntary Operating Permits	10/18/95	4/30/96, 61 FR 18958.	
567–22.201	Eligibility for Voluntary Operating Permits	4/9/97	6/25/98, 63 FR 34601.	
567–22.202	Requirement to Have a Title V Permit	4/9/97	6/25/98, 63 FR 34601.	
567–22.203	Voluntary Operating Permit Applications	5/8/96	6/25/98, 63 FR 34601.	
567–22.204	Voluntary Operating Permit Fees	12/14/94	4/30/96, 61 FR 18958.	
567–22.205	Voluntary Operating Permit Processing Procedures.	12/14/94	4/30/96, 61 FR 18958.	
567–22.206	Permit Content	10/18/95	4/30/96, 61 FR 18958.	
567–22.207	Relation to Construction Permits	12/14/94	4/30/96, 61 FR 18958.	
567–22.208	Suspension, Termination, and Revocation of Voluntary Operating Permits.	12/14/94	4/30/96, 61 FR 18958.	
567–22.300	Operating Permit by Rule for Small Sources	4/9/97	6/25/98, 63 FR 34600.	
Chapter 23—Emission Standards for Contaminants				
567–23.1	Emission Standards	7/16/97	6/25/98, 63 FR 34600	Sections 23.1(2)–(5) are not approved in the SIP.
567–23.2	Open Burning	4/19/95	10/23/97, 62 FR 55172.	
567–23.3	Specific Contaminants	5/8/96	6/25/98, 63 FR 34601	Section 23.3(3)(d) is not part of the approved SIP.
567–23.4	Specific Processes	4/20/94	12/21/94, 59 FR 65717	Section 23.4(10) is not part of the approved SIP.
Chapter 24—Excess Emissions				
567–24.1	Excess Emission Reporting	2/24/93	5/12/93, 58 FR 27939.	
567–24.2	Maintenance and Repair Requirements	3/14/90	6/29/90 55 FR 26690.	
Chapter 25—Measurement of Emissions				
567–25.1	Testing and Sampling of New and Existing Equipment.	7/12/95	10/23/97, 62 FR 55172.	
Chapter 26—Prevention of Air Pollution Emergency Episodes				
567–26.1	General	3/14/90	6/29/90, 55 FR 26690.	
567–26.2	Episode Criteria	3/14/90	6/29/90, 55 FR 26690.	
567–26.3	Preplanned Abatement Strategies	3/14/90	6/29/90, 55 FR 26690.	
567–26.4	Actions During Episodes	3/14/90	6/29/90, 55 FR 26690.	
Chapter 27—Certificate of Acceptance				
567–27.1	General	3/14/90	6/29/90, 55 FR 26690.	
567–27.2	Certificate of Acceptance	3/14/90	6/29/90, 55 FR 26690.	
567–27.3	Ordinance or Regulations	3/14/90	6/29/90, 55 FR 26690.	
567–27.4	Administrative Organization	3/14/90	6/29/90, 55 FR 26690.	
567–27.5	Program Activities	3/14/90	6/29/90, 55 FR 26690.	
Chapter 28—Ambient Air Quality Standards				
567–28.1	Statewide Standards	3/14/90	6/29/90, 55 FR 26690.	
Chapter 29—Qualification in Visual Determination of the Opacity of Emissions				
567–29.1	Methodology and Qualified Observer	5/8/96	6/25/98, 63 FR 34600.	
Chapter 31—Nonattainment Areas				
567–31.1	Permit Requirements Relating to Nonattainment Areas.	2/22/95	10/23/97, 62 FR 55172.	

EPA—APPROVED IOWA REGULATIONS—Continued

Iowa citation	Title	State effective date	EPA approval date	Comments
567–31.2	Conformity of General Federal Actions to the Iowa SIP or Federal Implementation Plan.	2/22/95	10/25/95, 60 FR 54597.	
	Linn County			
CHAPTER 10	Linn County Code of Ordinance Providing for Air Quality Chapter 10.	3/7/97	2/2/98, 63 FR 5268.	
	Polk County			
CHAPTER V	Polk County Board of Health Rules and Regulations Air Pollution Chapter V.	12/18/96	2/2/98, 63 FR 5268	Sections 5–27(3) and (4) are not a part of the SIP.

(d) EPA-approved state source-specific permits.

EPA-APPROVED IOWA SOURCE-SPECIFIC REGULATIONS

Name of source	Order/permit No.	State effective date	EPA approval date	Comments
Archer-Daniels Midland Company	90–AQ–10	3/25/91	11/1/91, 56 FR 56158.	
Interstate Power Company	89–AQ–04	2/21/90	11/1/91, 56 FR 56158.	
Grain Processing Corporation	74–A–015–S	9/18/95	12/1/97, 62 FR 63454.	
Grain Processing Corporation	79–A–194–S	9/18/95	12/1/97, 62 FR 63454.	
Grain Processing Corporation	79–A–195–S	9/18/95	12/1/97, 62 FR 63454.	
Grain Processing Corporation	95–A–374	9/18/95	12/1/97, 62 FR 63454.	
Muscatine Power and Water	74–A–175–S	9/14/95	12/1/97, 62 FR 63454.	
Muscatine Power and Water	95–A–373	9/14/95	12/1/97, 62 FR 63454.	
Monsanto Corporation	76–A–161S3	7/18/96	12/1/97, 62 FR 63454.	
Monsanto Corporation	76–A–265S3	7/18/96	12/1/97, 62 FR 63454.	

(e) The EPA approved nonregulatory provisions and quasi-regulatory measures.

EPA-APPROVED IOWA NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
Air Pollution Control Implementation Plan.	Statewide	1/27/72	5/31/72, 37 FR 10842.	
Request for a Two Year Extension to Meet the NAAQS.	Council Bluffs	1/27/72	5/31/72, 37 FR 10842	Correction notice published 3/2/76.
Revisions to Appendices D and G	Statewide	2/2/72	5/31/72, 37 FR 10842	Correction notice published 3/2/76.
Source Surveillance and Record Maintenance Statements.	Statewide	4/14/72	3/2/76, 41 FR 8960.	
Statement Regarding Public Availability of Emissions Data.	Statewide	5/2/72	3/2/76, 41 FR 8960.	
Letter Describing the Certificates of Acceptance for Local Air Pollution Control Programs.	Linn County, Polk County	12/14/72	10/1/76, 41 FR 43407.	
High Air Pollution Episode Contingency Plan.	Statewide	6/20/73	10/1/76, 41 FR 43407.	
Summary of Public Hearing on Revised Rules Which Were Submitted on July 17, 1975.	Statewide	9/3/75	10/1/76, 41 FR 43407.	
Air Quality Modeling to Support Sulfur Dioxide Emission Standards.	Statewide	3/4/77	6/1/77, 42 FR 27892.	
Nonattainment Plans	Mason City, Davenport, Cedar Rapids, Des Moines.	6/22/79	3/6/80, 45 FR 14561.	
Information on VOC Sources to Support the Nonattainment Plan.	Linn County	10/8/79	3/6/80, 45 FR 14561.	
Information and Commitments Pertaining to Legally Enforceable RACT Rules to Support the Nonattainment Plan.	Linn County	11/16/79	3/6/80, 45 FR 14561.	
Lead Plan	Statewide	8/19/80	3/20/81, 46 FR 17778.	
Letter to Support the Lead Plan	Statewide	1/19/81	3/20/81, 46 FR 17778.	

EPA-APPROVED IOWA NONREGULATORY PROVISIONS—Continued

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
Nonattainment Plans to Attain Secondary Standards.	Mason City, Cedar Rapids, Des Moines, Davenport, Keokuk, Council Bluffs, Fort Dodge, Sioux City, Clinton, Marshalltown, Muscatine, Waterloo.	4/18/80	4/17/81, 46 FR 22372.	
Information to Support the Particulate Matter Nonattainment Plan.	Mason City, Cedar Rapids, Des Moines, Davenport, Keokuk, Council Bluffs, Fort Dodge, Sioux City, Clinton, Marshalltown, Muscatine, Waterloo.	9/16/80	4/17/81, 46 FR 22372.	
Information to Support the Particulate Matter Nonattainment Plan.	Mason City, Cedar Rapids, Des Moines, Davenport, Keokuk, Council Bluffs, Fort Dodge, Sioux City, Clinton, Marshalltown, Muscatine, Waterloo.	11/17/80	4/17/81, 46 FR 22372.	
Schedule for Studying Nontraditional Sources of Particulate Matter and for Implementing the Results.	Mason City, Cedar Rapids, Des Moines, Davenport, Keokuk, Council Bluffs, Fort Dodge, Sioux City, Clinton, Marshalltown, Muscatine, Waterloo.	6/26/81	3/5/82, 47 FR 9462.	
Air Monitoring Strategy	Statewide	7/15/81	4/12/82, 47 FR 15583.	
Letter of Commitment to Revise Unapprovable Portions of Chapter 22.	Statewide	5/14/85	9/12/85, 50 FR 37176.	
Letter of Commitment to Submit Stack Height Regulations and to Implement the EPA's Regulations until the State's Rules Are Approved.	Statewide	4/22/86	7/11/86, 51 FR 25199.	
Letter of Commitment to Implement the Stack Height Regulations in a Manner Consistent with the EPA's Stack Height Regulations with Respect to NSR/PSD Regulations.	Statewide	4/22/87	6/26/87, 52 FR 23981.	
PM_{10} SIP	Statewide	10/28/88	8/15/89, 54 FR 33536.	
Letter Pertaining to NO_X Rules and Analysis Which Certifies the Material Was Adopted by the State on October 17, 1990.	Statewide	11/8/90	2/13/91, 56 FR 5757.	
SO_2 Plan	Clinton	3/13/91	11/1/91, 56 FR 56158.	
Letter Withdrawing Variance Provisions.	Polk County	10/23/91	11/29/91, 56 FR 60924	Correction notice published 1/26/93.
Letter Concerning Open Burning Exemptions.	Statewide	10/3/91	1/22/92, 57 FR 2472.	
Compliance Sampling Manual	Statewide	1/5/93	5/12/93, 58 FR 27939.	
Small Business Assistance Plan	Statewide	12/22/92	9/27/93, 58 FR 50266.	
Voluntary Operating Permit Program.	Statewide	12/8/94, 2/16/96, 2/27/96	4/30/96, 61 FR 18958.	
SO_2 Plan	Muscatine	6/19/96, 5/21/97	12/1/97, 62 FR 63454.	
SO_2 Maintenance Plan	Muscatine	4/25/97	3/19/98, 63 FR 13343.	

Subpart R—Kansas

§ 52.870 [Redesignated as § 52.875]

4. Section 52.870 is redesignated as § 52.875 and the section heading and paragraph (a) are revised to read as follows:

§ 52.875 Original identification of plan section.

(a) This section identifies the original ''Air Quality Implementation Plan for the State of Kansas'' and all revisions submitted by Kansas that were Federally approved prior to July 1, 1998.

* * * * *

5. A new § 52.870 is added to read as follows:

§ 52.870 Identification of plan.

(a) Purpose and scope. This section sets forth the applicable SIP for Kansas under Section 110 of the CAA, 42 U.S.C. 7401 *et seq.* and 40 CFR Part 51 to meet NAAQS.

(b) Incorporation by reference.

(1) Material listed in paragraphs (c), (d), and (e) of this section with an EPA approval date prior to July 1, 1998, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c), (d), and (e) of this section with the EPA approval dates after July 1, 1998, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region VII certifies that the rules/regulations provided by the EPA in the SIP compilation at the addresses in paragraph (b)(3) are an exact duplicate of the officially promulgated state rules/regulations which have been approved as part of the SIP as of July 1, 1998.

(3) Copies of the materials incorporated by reference may be inspected at the Environmental Protection Agency, Region VII, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; the Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC; or at the EPA Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC 20460.

(c) EPA-approved regulations.

EPA—APPROVED KANSAS REGULATIONS

Kansas citation	Title	State effective date	EPA approval date	Comments
Kansas Department of Health and Environment Ambient Air Quality Standards and Air Pollution Control				
General Regulations				
K.A.R. 28–19–6	Statement of Policy	1/1/72	5/31/72, 37 FR 10867	Kansas revoked this rule 5/1/82.
K.A.R. 28–19–7	Definitions	11/22/93	7/17/95, 60 FR 36361.	
K.A.R. 28–19–8	Reporting Required	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–9	Time Schedule for Compliance	5/1/84	12/21/87, 52 FR 48265.	
K.A.R. 28–19–10	Circumvention of Control Regulations.	1/1/71	5/31/72, 37 FR 10867.	
K.A.R. 28–19–11	Exceptions Due to Breakdowns or Scheduled Maintenance.	1/1/74	11/8/73, 38 FR 30867.	
K.A.R. 28–19–12	Measurement of Emissions	1/1/71	5/31/72, 37 FR 10867.	
K.A.R. 28–19–13	Interference with Enjoyment of Life and Property.	1/1/74	11/8/73, 38 FR 30876.	
K.A.R. 28–19–14	Permits Required	1/24/94	7/17/95, 60 FR 36361.	
K.A.R. 28–19–15	Severability	1/1/71	5/31/72, 37 FR 10867.	
Nonattainment Area Requirements				
K.A.R. 28–19–16	New Source Permit Requirements for Designated Nonattainment Areas.	10/16/89	1/16/90, 55 FR 1422.	
K.A.R. 28–19–16a	Definitions	10/16/89	1/16/90, 55 FR 1422.	
K.A.R. 28–19–16b	Permit Required	10/16/89	1/16/90, 55 FR 1422.	
K.A.R. 28–19–16c	Creditable Emission Reductions	10/16/89	1/16/90, 55 FR 1422	The EPA deferred action on the state's current definition of the terms ''building, structure, facility, or installation''; ''installation''; and ''reconstruction.''
K.A.R. 28–19–16d	Fugitive Emission Exemption	10/16/89	1/16/90, 55 FR 1422	
K.A.R. 28–19–16e	Relaxation of Existing Emission Limitations.	10/16/89	1/16/90, 55 FR 1422.	
K.A.R. 28–19–16f	New Source Emission Limits	10/16/89	1/16/90, 55 FR 1422.	
K.A.R. 28–19–16g	Attainment and Maintenance of National Ambient Air Quality Standards.	10/16/89	1/16/90, 55 FR 1422.	
K.A.R. 28–19–16h	Compliance of Other Sources	10/16/89	1/16/90, 55 FR 1422.	
K.A.R. 28–19–16i	Operating Requirements	10/16/89	1/16/90, 55 FR 1422.	
K.A.R. 28–19–16j	Revocation and Suspension of Permit.	10/16/89	1/16/90, 55 FR 1422.	
K.A.R. 28–19–16k	Notification Requirements	10/16/89	1/16/90, 55 FR 1422.	
K.A.R. 28–19–16l	Failure to Construct	10/16/89	1/16/90, 55 FR 1422.	
K.A.R. 28–19–16m	Compliance with Provisions of Law Required.	10/16/89	1/16/90, 55 FR 1422.	
Attainment Area Requirements				
K.A.R. 28–19–17	Prevention of Significant Deterioration of Air Quality.	6/8/92	1/12/93, 58 FR 3847	The EPA retained PSD permit authority for Indian lands.
K.A.R. 28–19–17a	Incorporation of Federal Regulation by Reference.	6/8/92	1/12/93, 58 FR 3847.	

EPA—APPROVED KANSAS REGULATIONS—Continued

Kansas citation	Title	State effective date	EPA approval date	Comments
K.A.R. 28–19–17b	Definitions	6/8/92	1/12/93, 58 FR 3847.	
K.A.R. 28–19–17c	Ambient Air Increments	6/8/92	1/12/93, 58 FR 3847.	
K.A.R. 28–19–17d	Ambient Air Ceilings	6/8/92	1/12/93, 58 FR 3847.	
K.A.R. 28–19–17e	Stack Height	6/8/92	1/12/93, 58 FR 3847.	
K.A.R. 28–19–17f	Review of Major Stationary Sources and Major Modifications, Source Applicability, and Exemptions.	6/8/92	1/12/93, 58 FR 3847.	
K.A.R. 28–19–17g	Control Technology Review	6/8/92	1/12/93, 58 FR 3847.	
K.A.R. 28–19–17h	Source Impact Analysis	6/8/92	1/12/93, 58 FR 3847.	
K.A.R. 28–19–17i	Air Quality Models	6/8/92	1/12/93, 58 FR 3847.	
K.A.R. 28–19–17j	Air Quality Analysis	6/8/92	1/12/93, 58 FR 3847.	
K.A.R. 28–19–17k	Source Information	6/8/92	1/12/93, 58 FR 3847.	
K.A.R. 28–19–17l	Additional Impact Analysis	6/8/92	1/12/93, 58 FR 3847.	
K.A.R. 28–19–17m	Sources Affecting Federal Class I Areas.	6/8/92	1/12/93, 58 FR 3847.	
K.A.R. 28–19–17n	Revocation and Suspension of Permit.	6/8/92	1/12/93, 58 FR 3847.	
K.A.R. 28–19–17o	Public Participation	6/8/92	1/12/93, 58 FR 3847.	
K.A.R. 28–19–17p	Source Obligation	6/8/92	1/12/93, 58 FR 3847.	
K.A.R. 28–19–17q	Innovative Control Technology	6/8/92	1/12/93, 58 FR 3847.	
	Stack Height Requirements			
K.A.R. 28–19–18	Stack Heights	5/1/88	4/20/89, 54 FR 15934	The state regulation has stack height credit. The EPA has not approved that part.
K.A.R. 28–19–18b	Definitions	5/1/88	4/20/89, 54 FR 15934.	
K.A.R. 28–19–18c	Methods for Determining Good Engineering Practice Stack Height.	5/1/88	4/20/89 54 FR 15934.	
K.A.R. 28–19–18d	Fluid Modeling	5/1/88	4/20/89, 54 FR 15934.	
K.A.R. 28–19–18e	Relaxation of Existing Emission Limitations.	5/1/88	4/20/89, 54 FR 15934.	
K.A.R. 28–19–18f	Notification Requirements	5/1/88	4/20/89, 54 FR 15934.	
	Continuous Emission Monitoring			
K.A.R. 28–19–19	Continuous Emission Monitoring	6/8/92	1/12/93, 58 FR 3847.	
	Processing Operation Emissions			
K.A.R. 28–19–20	Particulate Matter Emission Limitations.	10/16/89	1/16/90, 55 FR 1421.	
K.A.R. 28–19–21	Additional Emission Restrictions	10/16/89	1/16/90, 55 FR 1422.	
K.A.R. 28–19–22	Sulfur Compound Emissions	1/1/72	11/8/73, 38 FR 30876.	
K.A.R. 28–19–23	Hydrocarbon Emissions—Stationary Sources.	12/27/72	11/8/73, 38 FR 30876.	
K.A.R. 28–19–24	Control of Carbon Monoxide Emissions.	1/1/72	11/8/73, 38 FR 30876.	
	Indirect Heating Equipment Emissions			
K.A.R. 28–19–30	General Provisions	1/1/72	5/31/72, 37/FR 10867.	
K.A.R. 28–19–31	Emission Limitations	11/8/93	10/18/94, 59 FR 52425.	
K.A.R. 28–19–32	Exemptions—Indirect Heating Equipment.	11/8/93	10/18/94, 59 FR 52425.	
	Incinerator Emissions			
K.A.R. 28–19–40	General Provisions	1/1/71	5/31/72, 37 FR 10867.	
K.A.R. 28–19–41	Restriction of Emission	12/27/72	11/8/73, 38 FR 30876.	
K.A.R. 28–19–42	Performance Testing	1/1/72	11/8/73, 38 FR 30876.	
K.A.R. 28–19–43	Exceptions	1/1/71	5/31/72, 37 FR 10867.	
	Opacity Restrictions			
K.A.R. 28–19–50	Opacity Requirements	12/27/72	11/8/73, 38 FR 30876.	
K.A.R. 28–19–52	Exceptions	1/1/72	5/31/72, 37 FR 10867.	
	Air Pollution Emergencies			
K.A.R. 28–19–55	General Provisions	1/1/72	5/31/72, 37 FR 10867.	
K.A.R. 28–19–56	Episode Criteria	10/16/89	1/16/90, 55 FR 1422.	

EPA—APPROVED KANSAS REGULATIONS—Continued

Kansas citation	Title	State effective date	EPA approval date	Comments
K.A.R. 28–19–57 ..	Emission Reduction Requirements ..	1/1/72	5/31/72, 37 FR 10867.	
K.A.R. 28–19–58 ..	Emergency Episode Plans	1/1/72	5/31/72, 37 FR 10867.	
	Volatile Organic Compound Emissions			
K.A.R. 28–19–61 ..	Definitions	10/7/91	6/23/92, 57 FR 27936.	
K.A.R. 28–19–62 ..	Testing Procedures	10/7/71	6/23/92, 57 FR 27936.	
K.A.R. 28–19–63 ..	Automobile and Light Duty Truck Surface Coating.	11/8/93	10/18/94, 59 FR 52425.	
K.A.R. 28–19–64 ..	Bulk Gasoline Terminals	5/1/88	5/18/88, 53 FR 17000.	
K.A.R. 28–19–65 ..	Volatile Organic Compounds (VOC) Liquid Storage in Permanent Fixed Roof Type Tanks.	5/1/88	5/18/88, 53 FR 17700.	
K.A.R. 28–19–66 ..	Volatile Organic Compounds (VOC) Liquid Storage in External Floating Roof Tanks.	5/1/88	5/18/88, 53 FR 17700.	
K.A.R. 28–19–67 ..	Petroleum Refineries	5/1/86	1/2/87, 52 FR 53.	
K.A.R. 28–19–68 ..	Leaks from Petroleum Refinery Equipment.	5/1/86	1/2/87, 52 FR 53.	
K.A.R. 28–19–69 ..	Cutback Asphalt	5/1/88	5/18/88, 53 FR 17700.	
K.A.R. 28–19–70 ..	Leaks from Gasoline Delivery Vessels and Vapor Collection Systems.	5/1/88	5/18/88, 53 FR 17700.	
K.A.R. 28–19–71 ..	Printing Operations	5/1/88	5/18/88, 53 FR 17700.	
K.A.R. 28–19–72 ..	Gasoline Dispensing Facilities	5/1/88	5/18/88, 53 FR 17700.	
K.A.R. 28–19–73 ..	Surface Coating of Miscellaneous Metal Parts and Products and Metal Furniture.	6/8/92	1/12/93, 58 FR 3847.	
K.A.R. 28–19–74 ..	Wool Fiberglass Manufacturing	5/1/88	5/18/88, 53 FR 17700.	
K.A.R. 28–19–75 ..	Solvent Metal Cleaning	5/1/88	5/18/88, 53 FR 17700.	
K.A.R. 28–19–76 ..	Lithography Printing Operations	10/7/91	6/23/92, 57 FR 27936.	
K.A.R. 28–19–77 ..	Chemical Processing Facilities That Operate Alcohol Plants or Liquid Detergent Plants.	10/7/91	6/23/92, 57 FR 27936.	
K.A.R. 28–19–79 ..	Fuel Volatility	5/2/97	7/7/97, 62 FR 36212.	
	General Provisions			
K.A.R. 28–19–204	Permit Issuance and Modification; Public Participation.	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–212	Approved Test Methods and Emission Compliance Determination Procedures.	1/23/95	7/17/95, 60 FR 36361.	
	Construction Permits And Approvals			
K.A.R. 28–19–300	Applicability	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–301	Application and Issuance	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–302	Additional Provisions; Construction Permits.	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–303	Additional Provisions; Construction Approvals.	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–304	Fees	1/23/95	7/17/95, 60 FR 36361.	
	General Permits			
K.A.R. 28–19–400	General Requirements	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–401	Adoption by the Secretary	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–402	Availability of Copies; Lists of Sources to Which Permits Issued.	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–403	Application to Construct or Operate Pursuant to Terms of General Permits.	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–404	Modification, Revocation	1/23/95	7/17/95, 60 FR 36361.	
	Operating Permits			
K.A.R. 28–19–500	Applicability	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–501	Emissions Limitations and Pollution Control Equipment for Class I and Class II Operating Permits; Conditions.	1/23/95	7/17/95, 60 FR 36361.	

EPA—APPROVED KANSAS REGULATIONS—Continued

Kansas citation	Title	State effective date	EPA approval date	Comments
K.A.R. 28–19–502	Identical Procedural Requirements ..	1/23/95	7/17/95, 60 FR 36361	
	Class II Operating Permits			
K.A.R. 28–19–540	Applicability	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–541	Application Timetable and Contents	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–542	Permit-by-Rule	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–543	Permit Term and Content; Operational Compliance.	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–544	Modification of Sources or Operations.	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–545	Application Fee	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–546	Annual Emission Inventory	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–561	Permit-by-Rule; Reciprocating Engines.	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–562	Permit-by-Rule; Organic Solvent Evaporative Sources.	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–563	Permit-by-Rule; Hot Mix Asphalt Facilities.	1/23/95	7/17/95, 60 FR 36361.	
	Open Burning Restrictions			
K.A.R. 28–19–645	Open Burning Prohibited	3/1/96	10/2/96, 61 FR 51366.	
K.A.R. 28–19–646	Responsibility for Open Burning	3/1/96	10/2/96, 61 FR 51366.	
K.A.R. 28–19–647	Exceptions to Prohibition on Open Burning.	3/1/96	10/2/96, 61 FR 51366.	
K.A.R. 28–19–648	Agricultural Open Burning	3/1/96	10/2/96, 61 FR 51366.	
	Conformity			
K.A.R. 28–19–800	General Conformity of Federal Actions.	3/15/96	10/2/96, 61 FR 51366	
	Wyandotte County			
2A–1	Jurisdiction	5/1/81	4/3/81, 46 FR 20164.	
2A–2	Purpose	5/1/81	4/3/81, 46 FR 20164.	
2A–3	Definitions	5/1/81	4/3/81, 46 FR 20164.	
2A–4	Powers of the Board	5/1/81	4/3/81, 46 FR 20164.	
2A–5	Facts and Circumstances Pertinent to Orders of Joint Board.	5/1/81	4/3/81, 46 FR 20164.	
2A–6	Right of Entry for Inspection	5/1/81	4/3/81, 46 FR 20164.	
2A–7	Time for Compliance Schedule	5/1/81	4/3/81, 46 FR 20164.	
2A–8	Variance	5/1/81	4/3/81, 46 FR 20164.	
2A–9	Circumvention of Chapter or Regulations.	5/1/81	4/3/81, 46 FR 20164.	
2A–10	Air Pollution Nuisances Prohibited; Additional Emission Restrictions; Interference with the Enjoyment of Life and Property.	5/1/81	4/3/81, 46 FR 20164.	
2A–11	Reserved		.	
2A–12	Confidential Information	5/1/81	4/3/81, 46 FR 20164.	
2A–13	Registration and Permit Systems; Exemptions.	5/1/81	4/3/81, 46 FR 20164.	
2A–14	Review of New or Altered Sources ..	5/1/81	4/3/81, 46 FR 20164.	
2A–15	Public Hearings	5/1/81	4/3/81, 46 FR 20164.	
2A–16	Installations in Which Fuel Is Burned	5/1/81	4/3/81, 46 FR 20164.	
2A–17	Restriction of Emission of Particulate Matter.	5/1/81	4/3/81, 46 FR 20164.	
2A–18	Open Burning Restrictions	5/1/81	4/3/81, 46 FR 20164.	
2A–19	Opacity Requirements	5/1/81	4/3/81, 46 FR 20164.	
2A–20	Exceptions Due To Breakdowns or Scheduled Maintenance.	5/1/81	4/3/81, 46 FR 20164.	
2A–21	Preventing Particulate from Becoming Airborne.	5/1/81	4/3/81, 46 FR 20164.	
2A–22	Measurement of Emissions	5/1/81	4/3/81, 46 FR 20164.	
2A–23	Restrictions of Emissions of Odors ..	5/1/81	4/3/81, 46 FR 20164.	
2A–24	Sulfur Compound Emissions	5/1/81	4/3/81, 46 FR 20164.	
2A–25	Control of Carbon Monoxide Emissions.	5/1/81	4/3/81, 46 FR 20164.	
2A–26	Control of Nitrogen Oxide Emissions	5/1/81	4/3/81, 46 FR 20164.	

EPA—APPROVED KANSAS REGULATIONS—Continued

Kansas citation	Title	State effective date	EPA approval date	Comments
2A–27	Air Pollution Emergencies—General Provisions.	5/1/81	4/3/81, 46 FR 20164.	
2A–28	Same—Episode Criteria	5/1/81	4/3/81, 46 FR 20164.	
2A–29	Emission Reduction Requirements	5/1/81	4/3/81, 46 FR 20164.	
2A–30	Emergency Episode Plans	5/1/81	4/3/81, 46 FR 20164.	
2A–31	Penalties for Violation of Chapter or Air Pollution Control Regulations.	5/1/81	4/3/81, 46 FR 20164.	
2A–32	Conflict of Ordinances, Effect of Partial Invalidity.	5/1/81	4/3/81, 46 FR 20164.	

(d) EPA-approved state source-specific permits.

EPA-APPROVED KANSAS SOURCE-SPECIFIC PERMITS

Name of source	Permit No.	State effective date	EPA approval date	Comments
Board of Public Utilities, Quindaro Power Station	2090048	10/20/93	10/18/94, 59 FR 52425.	
Board of Public Utilities, Kaw Power Station	2090049	10/20/93	10/18/94, 59 FR 52425.	

(e) EPA-approved nonregulatory provisions and quasi-regulatory measures.

EPA-APPROVED KANSAS NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or Nonattainment area	State submittal date	EPA approval date	Comments
Implementation Plan for Attainment and Maintenance of the National Air Quality Standards.	Statewide	1/31/72	5/31/72, 37 FR 10867.	
Comments on the Plan in Response to EPA Review.	Kansas City	3/24/72	6/22/73, 38 FR 46565	Correction notice published 3/2/76.
Emergency Episode Operations/ Communications Manual.	Kansas City	4/6/72	11/8/73, 38 FR 30876	Correction notice published 3/2/76.
Emergency Episode Operations/ Communications Manual.	Statewide except Kansas City.	2/15/73	11/8/73, 38 FR 30876	Correction notice published 3/2/76.
Letter Concerning Attainment of CO Standards.	Kansas City	5/29/73	11/8/73, 38 FR 30876	Correction notice published 3/2/76.
Amendment to State Air Quality Control Law Dealing with Public Access to Emissions Data.	Statewide	7/27/73	11/8/73, 38 FR 30876	Correction notice published 3/2/76.
Analysis and Recommendations Concerning Designation of Air Quality Maintenance Areas.	Statewide	2/28/74	3/2/76, 41 FR 8960.	
Ozone Nonattainment Plan	Kansas City	9/17/79	4/3/81, 46 FR 20165.	
Ozone Nonattainment Plan	Douglas County	10/22/79	4/3/81, 46 FR 20165.	
TSP Nonattainment Plan	Kansas City	3/10/80	4/3/81, 46 FR 20165.	
Lead Plan	Statewide	2/17/81	10/22/81, 46 FR 51742.	
CO Nonattainment Plan	Wichita	4/16/81	12/15/81, 46 FR 61117.	
Air Monitoring Plan	Statewide	10/16/81	1/22/82, 47 FR 3112.	
Letter and Supporting Documentation Relating to Reasonably Available Control Technology for Certain Particulate Matter Sources.	Kansas City	9/15/81	6/18/82, 47 FR 26387	Correction notice published 1/12/84.
Letter Agreeing to Follow EPA Interim Stack Height Policy for Each PSD Permit Issued Until EPA Revises the Stack Height Regulations.	Statewide	6/20/84	12/11/84, 49 FR 48185.	
Letters Pertaining to Permit Fees	Statewide	3/27/86 9/15/87	12/21/87, 52 FR 48265.	
Revisions to the Ozone Attainment Plan.	Kansas City	7/2/86 4/16/87 8/18/87 8/19/87 1/6/88	5/18/88, 53 FR 17700.	
Revised CO Plan	Wichita	3/1/85 9/3/87	10/28/88, 53 FR 43691.	

EPA-APPROVED KANSAS NONREGULATORY PROVISIONS—Continued

Name of nonregulatory SIP provision	Applicable geographic or Nonattainment area	State submittal date	EPA approval date	Comments
Letter Pertaining to the Effective Date of Continuous Emission Monitoring Regulations.	Statewide	1/6/88	11/25/88, 53 FR 47690.	
Letters Pertaining to New Source Permit Regulations, Stack Height Regulations, and Stack Height Analysis and Negative Declarations.	Statewide	3/27/86 12/7/87 1/6/88	4/20/89, 54 FR 15934.	
PM_{10} Plan	Statewide	10/5/89 10/16/89	1/16/90, 55 FR 1422.	
Ozone Maintenance Plan	Kansas City	10/23/91	6/23/92, 57 FR 27936.	
Letter Pertaining to PSD NO_x Requirements.	Statewide	9/15/92	1/12/93, 58 FR 3847.	
Small Business Assistance Plan	Statewide	1/25/94	5/12/94, 59 FR 24644.	
Letter Regarding Compliance Verification Methods and Schedules Pertaining to the Board of Public Utilities Power Plants.	Kansas City	12/11/92	10/18/94, 59 FR 52425.	
Emissions Inventory Update Including a Motor Vehicle Emissions Budget.	Kansas City	5/11/95	4/25/96, 59 FR 52425.	

Subpart CC—Nebraska

§ 52.1420 [Redesignated as § 52.1426]

6. Section 52.1420 is redesignated as 52.1426 and the section heading and paragraph (a) are revised to read as follows:

§ 52.1426 Original identification of plan section.

(a) This section identifies the original ''Nebraska Air Quality Implementation Plan'' and all revisions submitted by Nebraska that were Federally approved prior to July 1, 1998.

* * * * *

7. A new § 52.1420 is added to read as follows:

§ 52.1420 Identification of Plan.

(a) Purpose and scope. This section sets forth the applicable SIP for Nebraska under section 110 of the CAA, 42 U.S.C. 7401 *et seq.*, and 40 CFR Part 51 to meet NAAQS.

(b) Incorporation by reference.

(1) Material listed in paragraphs (c), (d), and (e) of this section with an EPA approval date prior to July 1, 1998, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c), (d), and (e) of this section with the EPA approval dates after July 1, 1998, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region VII certifies that the rules/regulations provided by the EPA in the SIP compilation at the addresses in paragraph (b)(3) are an exact duplicate of the officially promulgated state rules/regulations which have been approved as part of the SIP as of July 1, 1998.

(3) Copies of the materials incorporated by reference may be inspected at the Environmental Protection Agency, Region VII, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; the Office of Federal Register, 800 North Capitol Street, N.W., Suite 700, Washington, D.C.; or at the EPA Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC 20460.

(c) EPA-approved regulations.

EPA—APPROVED NEBRASKA REGULATIONS

Nebraska Citation	Title	State effective date	EPA approval date	Comments
	STATE OF NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY			
129–1	Definitions	5/29/95	10/18/95, 60 FR 53872.	
129–2	Definition of Major Source	5/29/95	10/18/95, 60 FR 53872.	
129–3	Region and Subregions	6/26/94	1/04/95, 60 FR 372.	
129–4	Ambient Air Quality Standards	6/26/94	1/04/95, 60 FR 372.	
129–5	Operating Permit	5/29/95	2/09/96, 61 FR 4899.	
129–6	Emissions Reporting	5/29/95	10/18/95, 60 FR 53872.	
129–7	Operating Permits—Application	5/29/95	2/09/96, 61 FR 4899.	
129–8	Operating Permit Content	5/29/95	10/18/95, 60 FR 53872.	
129–9	General Operating Permits for Class I and II Sources.	5/29/95	10/18/95, 60 FR 53872.	
129–10	Operating Permits for Temporary Sources	5/29/95	10/18/95, 60 FR 53872.	
129–11	Operating Permits—Emergency; Defense	5/29/95	10/18/95, 60 FR 53872.	
129–12	Operating Permit Renewal and Expiration	5/29/95	2/09/96, 61 FR 4899.	
129–13	Class I Operating Permit—EPA Review; Affected States Review; Class II Permit.	5/29/95	10/18/95, 60 FR 53872.	

EPA—APPROVED NEBRASKA REGULATIONS—Continued

Nebraska Citation	Title	State effective date	EPA approval date	Comments
129–14	Permits—Public Participation	5/29/95	10/18/95, 60 FR 53872.	
129–15	Operating Permit Modification; Reopening for Cause.	5/29/95	10/18/95, 60 FR 53872.	
129–16	Stack Heights; Good Engineering Practice (GEP).	6/26/94	1/04/95, 60 FR 372.	
129–17	Construction Permits—When Required	5/29/95	2/09/96, 61 FR 4899.	
129–19	Prevention of Significant Deterioration of Air Quality.	5/29/95	2/09/96, 61 FR 4899.	
129–20	Particulate Emissions; Limitations and Standards (Exceptions Due to Breakdowns of Scheduled Maintenance: See Chapter 34).	6/26/94	1/04/95, 60 FR 372.	
129–21	Controls for Transferring, Conveying, Railcar and Truck Loading at Rock Processing Operations in Cass County.	6/26/94	1/05/95, 60 FR 372.	
129–22	Incinerators; Emission Standards	6/26/94	1/04/95, 60 FR 372.	
129–24	Sulfur Compound Emissions, Existing Sources Emission Standards.	6/26/94	1/04/95, 60 FR 372.	
129–25	Nitrogen Oxides (Calculated as Nitrogen Dioxide); Emissions Standards for Existing Stationary Sources.	5/29/95	2/09/96, 61 FR 4899.	
129–30	Open Fires, Prohibited; Exceptions	6/26/94	1/04/95, 60 FR 372.	
129–32	Dust; Duty to Prevent Escape of	6/26/94	1/04/95, 60 FR 372.	
129–33	Compliance; Time Schedule for	6/26/94	1/04/95, 60 FR 372.	
129–34	Emission Sources; Testing; Monitoring	6/26/94	1/04/95, 60 FR 372.	
129–35	Compliance; Exceptions Due to Startup, Shutdown, or Malfunction.	6/26/94	1/04/95, 60 FR 372.	
129–36	Control Regulations; Circumvention, When Excepted.	6/26/94	1/04/95, 60 FR 372.	
129–37	Compliance; Responsibility	6/26/94	1/04/95, 60 FR 372.	
129–38	Emergency Episodes; Occurrence and Control, Contingency Plans.	6/26/94	1/04/95, 60 FR 372.	
129–39	Visible Emissions from Diesel-powered Motor Vehicles.	6/26/94	1/04/95, 60 FR 372.	
129–40	General Conformity	5/29/95	2/12/96, 61 FR 5297.	
129–41	General Provision	5/29/95	2/09/96, 61 FR 4899.	
129–42	Consolidated with Chapter 41	5/29/95	2/09/96, 61 FR 4899.	
129–43	Consolidated with Chapter 41	5/29/95	2/09/96, 61 FR 4899.	
129–44	Consolidated with Chapter 41	5/29/95	2/09/96, 61 FR 4899.	
Appendix I	Emergency Emission Reductions	6/26/94	1/04/94, 60 FR 372.	
TITLE 115—RULES OF PRACTICE AND PROCEDURE				
115–1	Definitions of Terms	8/08/93	1/04/95, 60 FR 372.	
115–2	Filing and Correspondence	8/08/93	1/04/95, 60 FR 372.	
115–3	Public Records Availability	8/08/93	1/04/95, 60 FR 372.	
115–4	Public Records Confidentiality	8/08/93	1/04/95, 60 FR 372.	
115–5	Public Hearings	8/08/93	1/04/95, 60 FR 372.	
115–6	Voluntary Compliance	8/08/93	1/04/95, 60 FR 372.	
115–7	Contested Cases	8/08/93	1/04/95, 60 FR 372.	
115–8	Emergency Proceeding Hearings	8/08/93	1/04/95, 60 FR 372.	
115–9	Declaratory Rulings	8/08/93	1/04/95, 60 FR 372.	
115–10	Rulemaking	8/08/93	1/04/95, 60 FR 372.	
115–11	Variances	8/08/93	1/04/95, 60 FR 372.	
Lincoln-Lancaster County Air Pollution Control Program Article 1—Administration and Enforcement				
Section 1	Intent	5/16/95	2/14/96, 61 FR 5701.	
Section 2	Unlawful Acts—Permits Required	5/16/95	2/14/96, 61 FR 5701.	
Section 3	Violations—Hearing—Orders	5/16/95	2/14/96, 61 FR 5701.	
Section 4	Appeal Procedure	5/16/95	2/14/96, 61 FR 5701.	
Section 5	Variance	5/16/95	2/14/96, 61 FR 5701.	
Section 7	Compliance—Actions to Enforce—Penalties for Non-Compliance.	5/16/95	2/14/96, 61 FR 5701.	
Section 8	Procedure for Abatement	5/16/95	2/14/96, 61 FR 5701.	
Section 9	Severability	5/16/95	2/14/96, 61 FR 5701.	
Article 2—Regulations and Standards				
Section 1	Definitions	5/16/95	2/14/96, 61 FR 5701.	
Section 2	Major Sources—Defined	5/16/95	2/14/96, 61 FR 5701.	

EPA—APPROVED NEBRASKA REGULATIONS—Continued

Nebraska Citation	Title	State effective date	EPA approval date	Comments
Section 4	Ambient Air Quality Standards	5/16/95	2/14/96, 61 FR 5701.	
Section 5	Operating Permits—When Required	5/16/95	2/14/96, 61 FR 5701.	
Section 6	Emissions Reporting—When Required	5/16/95	2/14/96, 61 FR 5701.	
Section 7	Operating Permits—Application	5/16/95	2/14/96, 61 FR 5701.	
Section 8	Operating Permit—Content	5/16/95	2/14/96, 61 FR 5701.	
Section 9	General Operating Permits for Class I and II Sources.	5/19/95	2/14/96, 61 FR 5701.	
Section 10	Operating Permits for Temporary Services	5/16/95	2/14/96, 61 FR 5701.	
Section 11	Emergency Operating Permits—Defense	5/16/95	2/14/96, 61 FR 5701.	
Section 12	Operating Permit Renewal and Expiration	5/16/95	2/14/96, 61 FR 5701.	
Section 14	Permits—Public Participation	5/16/95	2/14/96, 61 FR 5701.	
Section 15	Operating Permit Modifications—Reopening for Cause.	5/16/95	2/14/96, 61 FR 5701.	
Section 16	Stack—Heights—Good Engineering Practice (GEP).	5/16/95	2/14/96, 61 FR 5701.	
Section 17	Construction Permits—When Required	5/16/95	2/14/96, 61 FR 5701.	
Section 19	Prevention of Significant Deterioration of Air Quality.	5/16/95	2/14/96, 61 FR 5701.	
Section 20	Particulate Emissions—Limitations and Standards.	5/16/95	2/14/96, 61 FR 5701.	
Section 22	Incinerator Emissions	5/16/95	2/14/96, 61 FR 5701.	
Section 24	Sulfur Compound Emissions—Existing Sources—Emission Standards.	5/16/95	2/14/96, 61 FR 5701.	
Section 25	Nitrogen Oxides (Calculated as Nitrogen Dioxide)—Emissions Standards for Existing Stationary Sources.	5/16/95	2/14/96, 61 FR 5701.	
Section 32	Dust—Duty to Prevent Escape of	5/16/95	2/14/96, 61 FR 5701.	
Section 33	Compliance—Time Schedule for	5/16/95	2/14/96, 61 FR 5701.	
Section 34	Emission Sources—Testing—Monitoring	5/16/95	2/14/96, 61 FR 5701.	
Section 35	Compliance—Exceptions Due to Startup Shutdown or Malfunction.	5/16/95	2/14/96, 61 FR 5701.	
Section 36	Control Regulations—Circumvention—When Expected.	5/16/95	2/14/96, 61 FR 5701.	
Section 37	Compliance—Responsibility of Owner/Operator Pending Review by Director.	5/16/95	2/14/96, 61 FR 5701.	
Section 38	Emergency Episodes—Occurrence and Control—Contingency Plans.	5/16/95	2/14/96, 61 FR 5701.	
Appendix I	Emergency Emission Reduction Regulations	5/16/95	2/14/96, 61 FR 5701.	
City of Omaha Chapter 41—Air Quality Control Article I in General				
41–2	Adoption of State Regulations with Exceptions	9/24/74	5/26/82, 47 FR 22954.	
41–4	Enforcement—Generally	5/29/95	2/14/96, 61 FR 5701.	
41–5	Same Health Department	5/29/95	2/14/96, 61 FR 5701.	
41–6	Residential Exemptions	5/29/95	2/14/96, 61 FR 5701.	
41–9	Penalties	5/29/95	2/14/96, 61 FR 5701.	
41–10	Civil Enforcement	5/29/95	2/14/96, 61 FR 5701.	
Article II—Permitting of Air Contaminant Sources				
41–23	Prerequisite to Approval	5/29/95	2/14/96, 61 FR 5701.	
41–27	Signature Required; Guarantee	5/29/95	2/14/96, 61 FR 5701.	
41–38	Funds	5/29/95	2/14/96, 61 FR 5701.	
41–40	Fees—When Delinquent	5/29/95	2/14/96, 61 FR 5701.	
Article IV—Waste Incinerators Division 1. Generally				
41–60	Definitions	5/29/95	2/14/96, 61 FR 5701.	
41–61	Violations	5/26/70	5/31/72, 37 FR 10842.	
Article IV—Waste Incinerators Division 2. Emissions				
41–70	New or Modified Facilities	5/29/95	2/14/96, 61 FR 5701.	
41–71	Existing Facilities	5/29/95	2/14/96, 61 FR 5701.	
41–72	Emission Testing	5/29/95	2/14/96, 61 FR 5701.	
Article IV—Waste Incinerators Division 3. Design				
41–80	New or Modified Waste Incinerators	5/29/95	2/14/96, 61 FR 5701.	

EPA—APPROVED NEBRASKA REGULATIONS—Continued

Nebraska Citation	Title	State effective date	EPA approval date	Comments
41–81	Existing Incinerators	5/29/95	2/14/96, 61 FR 5701.	

(d) EPA-approved state source-specific permits.

EPA-APPROVED NEBRASKA SOURCE-SPECIFIC PERMITS

Name of source	Permit No.	State effective date	EPA approval date	Comments
Gould, Inc	677	11/9/83	1/31/85, 50 FR 4510.	
Asarco, Inc	1520	6/6/96	3/20/97, 62 FR 13329	The EPA did not approve paragraph 19.

(e) EPA-approved nonregulatory provisions and quasi-regulatory measures.

EPA-APPROVED NEBRASKA NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
Air Quality Implementation Plan	Statewide	1/28/72	5/31/72, 37 FR 10842.	
Confirmation That the State Does Not Have Air Quality Control Standards Based on Attorney General's Disapproval.	Statewide	4/25/72	5/31/72, 37 FR 10842.	
Request for Two-Year Extension to Meet the Primary NO_X Standard.	Omaha	1/24/72	7/27/72, 37 FR 15080.	
Clarification of Section 11 of the State's Plan	Statewide	2/16/72	7/27/72, 37 FR 15080.	
Letters Clarifying the Application of the States Emergency Episode Rule.	Omaha	10/2/72	5/14/73, 38 FR 12696.	
Analysis of Ambient Air Quality in Standard Metropolitan Statistical Areas and Recommendations for Air Quality Maintenance Areas.	Omaha, Lincoln, Sioux City.	5/9/74	6/2/75, 40 FR 23746.	
Amended State Law (LB1029) Giving the Department of Environmental Quality Authority to Require Monitoring of Emissions, Reporting of Emissions and Release of Emissions Data.	Statewide	2/10/76	6/23/76, 41 FR 25898.	
Air Monitoring Plan	Statewide	6/19/81	10/6/81, 46 FR 49122.	
TSP Nonattainment Plan	Douglas and Cass Counties.	9/25/80 8/9/82	3/28/83, 48 FR 12715.	
Plan for Intergovernmental Consultation and Coordination and for Public Notification.	Statewide	8/9/82	7/5/83, 48 FR 30631.	
Lead Plan	Statewide except Omaha.	1/9/81 8/5/81 1/11/83	11/29/83, 48 FR 53697	The plan was approved except that portion pertaining to Omaha.
Lead Nonattainment Plan	Omaha	7/24/84 11/17/83 8/1/84	1/31/85, 50 FR 4510.	
CO Nonattainment Plan	Omaha	4/3/85	9/15/86, 51 FR 32640.	
CO Nonattainment Plan	Lincoln	4/3/85	9/19/86, 51 FR 33264.	
Revised Lead Nonattainment Plan	Omaha	2/2/87	8/3/87, 52 FR 28694.	
Letter Pertaining to NO_X Rules and Analysis Which Certifies the Material Became Effective on February 20, 1991.	Statewide	3/8/91	7/2/91, 56 FR 30335	State submittal date is date of the letter.
Small Business Assistance Program	Statewide	11/12/92	8/30/93, 58 FR 45452.	
Class II Operating Permit Program Including Letter Committing to Submit Information to RACT/ BACT/LAER Clearinghouse, Letter Regarding Availability of State Operating Permits to the EPA and Specified Emissions Limits in Permits, and Letter Regarding the Increase in New Source Review Thresholds.	Statewide	2/16/94	1/4/95, 60 FR 372.	
Letter from City of Omaha Regarding Authority to Implement Section 112(l) and Letter from the State Regarding Rule Omissions and PSD Program Implementation.	Omaha, Lincoln	9/13/95 11/9/95	2/14/96, 61 FR 5725	State submittal dates are dates of letters.

[FR Doc. 99–2989 Filed 2–11–99; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Oklahoma (FEMA Docket No. 7264).	City of Shawnee ..	September 18, 1998, September 25, 1998, *Shawnee News-Star.*	The Honorable Chris Harden, Mayor, City of Shawnee, P.O. Box 1448, Shawnee, Oklahoma 74802–1448.	August 14, 1998 ..	400178
Texas:					
Denton and Dallas (FEMA Docket No. 7260).	City of Carrollton	September 11, 1998, September 18, 1998, *Metrocrest News.*	The Honorable Milburn Gravley, Mayor, City of Carrollton, P.O. Box 110535, Carrollton, Texas 75011–0535.	August 19, 1998 ..	480167

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Denton (FEMA Docket No. 7260).	Unincorporated Areas.	September 11, 1998, September 18, 1998, *Denton Record Chronicle.*	The Honorable Jeff Moseley, Denton County Judge, Courthouse-on-the-Square, 110 West Hickory Street, Denton, Texas 76201.	August 19, 1998 ..	480774
Denton (FEMA Docket No. 7260).	City of Lewisville ..	September 11, 1998, September 18, 1998, *Lewisville News.*	The Honorable Bobbie Mitchell, Mayor, City of Lewisville, P.O. Box 299022, Lewisville, Texas 75029–9002.	August 19, 1998 ..	480195

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: February 2, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–3534 Filed 2–11–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7272]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director for Mitigation reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Maricopa	City of Phoenix	December 22, 1998, December 29, 1998, *Arizona Republic*.	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, Arizona 85003–1611.	November 19, 1998.	040051
Pima	Unincorporated Areas.	December 15, 1998, December 22, 1998, *Arizona Daily Star*.	The Honorable Mike Boyd, Pima County Board of Supervisors, 130 West Congress, Fifth Floor, Tucson, Arizona 85701.	November 20, 1998.	040073
California: Santa Clara.	City of Gilroy	December 11, 1998, December 18, 1998, *Gilroy Dispatch*.	The Honorable K. A. Mike Gilroy, Mayor, City of Gilroy, 7351 Rosanna Street, Gilroy, California 95020.	November 10, 1998.	060340
Colorado:					
Gilpin	City of Black Hawk	December 11, 1998, December 18, 1998, *Weekly Register Call*.	The Honorable Kathryn Eccker, Mayor, City of Black Hawk, P. O. Box 17, Black Hawk, Colorado 80422.	November 9, 1998	080076
El Paso	Unincorporated Areas.	December 10, 1998, December 17, 1998, *The Tribune*.	The Honorable Charles C. Brown, Chairman, El Paso County Board of Commissioners, 27 East Vermijo Avenue, Third Floor, Colorado Springs, Colorado 80903–2208.	November 9, 1998	080059
Jefferson	Unincorporated Area.	December 16, 1998, December 23, 1998, *Columbine County Courier*.	The Honorable Michelle, Chairperson, Jefferson County, Board of Commissioners, 100 Jefferson County Parkway, Suite 5550, Golden, Colorado 80419.	December 3, 1998	080087
Missouri: Jackson	City of Raytown	December 23, 1998, December 30, 1998, *Raytown Post*.	The Honorable Jack R. Nesbitt, Mayor, City of Raytown, 10000 East 59th Street, Raytown, Missouri 64133.	March 30, 1999	290176
Nevada: Clark	City of Las Vegas	December 22, 1998, December 29, 1998, *Las Vegas Review Journal*.	The Honorable Jan Laverty Jones, Mayor, City of Las Vegas, 400 East Stewart Avenue, Las Vegas, Nevada 89101–2986.	November 30, 1998.	325276
Texas: Bexar	City of Alamo Heights.	December 10, 1998, December 17, 1998, *North San Antonio Times*.	The Honorable Robert Biechlin, Mayor, City of Alamo Heights, 6116 Broadway, San Antonio, Texas 78209.	March 17, 1999	480036
Dallas	City of Irving	December 17, 1998, December 24, 1998, *Irving News*.	The Honorable Morris H. Parrish, Mayor, City of Irving, P. O. Box 152288, Irving, Texas 75015–2288.	November 20, 1998.	480180
Bell	City of Killeen	December 22, 1998, December 29, 1998, *Killeen Daily Herald*,.	The Honorable Fred Latham, Mayor, City of Killeen, P. O. Box 1329, Killeen, Texas 76540.	November 20, 1998.	480031
Bexar	City of San Antonio.	December 10, 1998, December 17, 1998, *North San Antonio Times*.	The Honorable Howard W. Peak, Mayor, City of San Antonio, P. O. Box 839966, San Antonio, Texas 78283–3966.	March 17, 1999	480045

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: February 6, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–3535 Filed 2–11–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington,

DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
ALASKA	
Homer (City), Kenai Peninsula Borough (FEMA Docket No. 7250)	
Kachemak Bay:	
At the northern end of Kachemak Bay Drive	*14
Near Coal Point	*22
Near the intersection of Lake Street and Ocean Drive	*28
Maps are available for inspection at the City of Homer City Hall, Homer, Alaska.	
To convert from NGVD to mean Lower Low Water (MLLW), subtract 9.7 feet.	
CALIFORNIA	
Palo Alto (City), Santa Clara County (FEMA Docket No. 7246)	
Shallow Flooding:	
At the intersection of Channing Avenue and Wildwood Lane	*10
At the intersection of Palo Alto Avenue and Chaucer Street	*40
At the intersection of Palo Alto Avenue and Byron Street	*56
Maps are available for inspection at the City of Palo Alto Public Works Department, 250 Hamilton Avenue, Sixth Floor, Palo Alto, California.	
San Diego (City), San Diego County (FEMA Docket No. 7258)	
Alvarado Creek:	
At confluence with San Diego River	*66
Approximately 2,850 feet upstream of Alvarado Road	*379
Maps are available for inspection at Engineering and Capital Projects, 1010 Second Avenue, Suite 1200, San Diego, California.	
Shasta County (Unincorporated Areas) (FEMA Docket No. 7246)	
Churn Creek North Branch:	
Approximately 3,100 feet upstream of Shasta Dam Boulevard	*992
Approximately 3,750 feet upstream of Shasta Dam Boulevard	*1,043
Churn Creek South Branch:	
Just downstream of Southern Pacific Railroad	*750
Just upstream of Southern Pacific Railroad	*750
Little Churn Creek:	
Approximately 2,700 feet upstream of Lake Boulevard	*864
Approximately 3,150 feet upstream of Lake Boulevard	*871
Rich Gulch Creek:	
Approximately 600 feet upstream of Southern Pacific Railroad	*912
Approximately 1,000 feet upstream of Southern Pacific Railroad	*921
Nelson Creek:	
Approximately 950 feet upstream of Flanagans Road	*865
Approximately 1,600 feet upstream of Flanagans Road	*889
Salt Creek (Upper Reach):	
Approximately 800 feet downstream of Southern Pacific Railroad	*835
Just upstream of Southern Pacific Railroad	*889
Moody Creek:	
Approximately 750 feet downstream of Moody Creek Drive	*660

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
Just downstream of Cascade Boulevard	*768
Approximately 9,150 feet upstream of Cascade Boulevard	*868
Rancheria Creek:	
Approximately 850 feet downstream of Southern Pacific Railroad	*895
Just upstream of Southern Pacific Railroad	*992
Rancheria Creek North Branch:	
Approximately 2,600 feet upstream of confluence with Rancheria Creek	*841
Approximately 6,400 feet upstream of confluence with Rancheria Creek None	*872
Maps are available for inspection at 1855 Placer Street, Room 206, Redding, California	
Shasta Lake County (City), Shasta County (FEMA Docket No. 7246)	
Churn Creek:	
Approximately 8,200 feet downstream of Ashby Road	*663
Just upstream of Hill Street	*811
Approximately 900 feet upstream of wooden footbridge	*1,119
Churn Creek North Branch:	
Approximately 850 feet downstream of Coeur d'Alene Avenue	*710
Just upstream of Southern Pacific Railroad	*793
Approximately 2,900 feet upstream of Shasta Dam Boulevard	*786
Churn Creek South Branch:	
Approximately 3,600 feet downstream of Shasta Gateway Drive	*683
Approximately 450 feet upstream of Phoenix Spa Road	*745
Nelson Creek:	
Approximately 1,650 feet downstream of Southern Pacific Railroad	*734
Just upstream of Southern Pacific Railroad	*776
Approximately 950 feet upstream of Flanagans Road	*865
Little Churn Creek:	
Just upstream of Lake Boulevard	*815
Approximately 2,300 feet upstream of Lake Boulevard	*859
Rich Gulch Creek:	
Approximately 170 feet upstream of Lake Boulevard	*832
Approximately 2,550 feet upstream of Lake Boulevard	*907
Salt Creek:	
Approximately 4,100 feet downstream of Twin View Boulevard	*647
Just downstream of Shasta Dam Boulevard	*755
Approximately 1,200 feet upstream of Black Canyon Road	*835
Salt Creek North Branch:	
Approximately 650 feet downstream of Deer Creek Road	*736
Just downstream of Southern Pacific Railroad	*835
Just upstream of Shop Road	*941
Salt Creek South Branch:	
Approximately 300 feet downstream of Deer Creek Boulevard	*680
Approximately 2,400 feet upstream of Smith Avenue	*735
Moody Creek:	
Approximately 1,550 feet upstream of Moody Creek Road	*674
At confluence with Rancheria Creek	*810
Approximately 4,200 feet upstream of confluence with Rancheria Creek	*856
Rancheria Creek:	
Approximately 250 feet upstream of confluence with Moody Creek	*813
Approximately 6,000 feet upstream of confluence with Moody Creek	*890
Rancheria Creek North Branch:	
Approximately 100 feet upstream of confluence with Rancheria Creek	*815
Approximately 5,850 feet upstream of confluence with Rancheria Creek None	*867
Maps are available for inspection at the City of Shasta Lake Planning Division, 1650 Stanton Drive, Shasta Lake, California.	
LOUISIANA	
LeCompte (Town), Rapides Parish (FEMA Docket No. 7254)	
Bayou Boeuf:	
Approximately at Highway 112 (8,500 feet above unnamed walk bridge)	*68
Approximately at the walk bridge	*69
Maps are available for inspection at 1302 Weemes, LeCompte, Louisiana.	
Rapides Parish (Unincorporated Areas) (FEMA Docket No. 7254)	
Bayou Boeuf:	
Approximately at Highway 112 (8,500 feet above unnamed walk bridge)	*68
Approximately at the walk bridge at the corporate limits	*69
Maps are available for inspection at 5610 East Coliseum Boulevard, Alexandria, Louisiana.	
MISSOURI	
Alexandria (City), Clark County (FEMA Docket No. 7258)	
Mississippi River:	
At intersection of Tilford and Pecan	*492
At intersection of Walnut and Washington	*492
Maps are available for inspection at the City of Alexandria Planning Department, 505 Jackson, Alexandria, Missouri.	
Warren County (Unincorporated Areas) (FEMA Docket No. 7270)	
Peruque Creek:	
Approximately 6,200 feet downstream of Stringtown Road	*644
Approximately 1,885 feet upstream of Stringtown Road	*672
Maps are available for inspection at the Warren County Plans and Zoning Department, 105 South Market, Warrenton, Missouri.	
NEVADA	
West Wendover (City), Elko County (FEMA Docket No. 7258)	
Shallow Flooding:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
Along Wendover Boulevard, approximately 5,500 feet northwest of the intersection of Wendover Boulevard and State Highway 93A	(1) #1
Along Wendover Boulevard, approximately 2,000 feet northwest of the intersection of Wendover Boulevard and State Highway 93A	(1) #1
Approximately 500 feet east of the intersection of Wendover Boulevard and State Highway 93A	(1) *4,327
Approximately 2,500 feet north of Interstate Highway 80, along the Nevada/Utah State line	(1) #2
Approximately 500 feet southeast of the intersection of State Highway 93A and the Union Pacific Railroad	(1) #1
Just north of State Highway 93A, approximately 5,000 feet southwest of the intersection of State Highway 93A and the Union Pacific Railroad	(1) #3
Maps are available for inspection at 801 Alpine Street, West Wendover, Nevada.	
NORTH DAKOTA	
Dickinson (City), Stark County (FEMA Docket No. 7254)	
Heart River:	
Approximately 1,000 feet downstream of Ninth Avenue Southeast bridge	*2,381
Approximately 1,000 feet upstream of Ninth Avenue Southeast bridge	*2,383
Just downstream of Dickinson Dam	*2,397
Dickinson Drainage Ditch:	
Approximately 500 feet downstream of Burlington Northern Railroad	*2,397
Just upstream of Interstate Highway 94	*2,448
At 21st Street West	*2,456
East Tributary to the Heart River:	
At confluence with the Heart River	*2,363
At Tenth Avenue East	*2,474
Tributary A to East Tributary to the Heart River:	
At confluence with East Tributary to the Heart River	*2,394
At U.S. Highway 10	*2,432
Tributary B to East Tributary to the Heart River:	
At confluence with East Tributary to the Heart River	*2,444
At 21st Street East	*2,478
Maps are available for inspection at the City of Dickinson Public Works Department, 615 West Broadway, Dickinson, North Dakota.	
OREGON	
Clatsop County (Unincorporated Areas) (FEMA Docket No. 7258)	
Neacoxie Creek:	
Approximately 70 feet downstream of Golf Course Road	*14
870 feet upstream of Surf Pines Road	*20
Maps are available for inspection at the Clatsop County Planning Department, 800 Exchange, Suite 100, Astoria, Oregon.	
Florence (City), Lane County (FEMA Docket No. 7254)	
Siuslaw River:	
At confluence of Munsel Creek	*10
At U.S. Highway 101 bridge	*10
Maps are available for inspection at the City of Florence Planning Department, 250 Highway 101, Florence, Oregon.	
Gearhart (City), Clatsop County (FEMA Docket No. 7258)	
Neacoxie Creek:	
Approximately 70 feet downstream of G Street	*11
Approximately 50 feet upstream of Golf Course Road	*17
Maps are available for inspection at the City of Gearhart City Hall, 698 Pacific Way, Gearhart, Oregon.	
Lane County (and Incorporated Areas) (FEMA Docket No. 7254)	
Salmon Creek:	
At Willamette Highway Bridge	*1,162
South of south levee at railroad spur	*1,195
South of south levee at Salmon Creek Road	#1
Maps are available for inspection at the Lane County Planning Department, Public Service Building, 125 East Eighth Avenue, Eugene, Oregon.	
TEXAS	
Austin County (and Incorporated Areas) (FEMA Docket No. 7258)	
Allens Creek:	
Approximately 2,825 feet downstream of Atchison, Topeka, and Santa Fe Railroad bridge	*157
Approximately 1,870 feet downstream of Atchison, Topeka, and Santa Fe Railroad bridge	*159
Approximately 1,300 feet upstream of U.S. Route 90	*179
Approximately 1,690 feet downstream of Atchison, Topeka, and Santa Fe Railroad bridge	*160
Approximately 530 feet downstream of Atchison, Topeka, and Santa Fe Railroad bridge	*161
Approximately 1,300 feet upstream of U.S. Route 90	*179
Approximately 3,000 feet downstream of Atchison, Topeka, and Santa Fe Railroad bridge	*158
Just upstream of U.S. Route 10	*172
Approximately 1,300 feet upstream of U.S. Route 90	*179
Maps are available for inspection at the City of Sealy Public Works Department, 415 Main Street, Sealy, Texas.	
Maps are available for inspection at the Austin County Courthouse, 1 East Main Street, Bellville, Texas.	
WASHINGTON	
Ferry County (Unincorporated Areas) (FEMA Docket No. 7258)	
Kettle River:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
Approximately 475 feet downstream of confluence with Cottonwood Creek	*1,789
Approximately 600 feet upstream of confluence with unnamed tributary	*1,794
Approximately 1,100 feet downstream of confluence with Emanuel Creek	*1,798
Maps are available for inspection at the Ferry County Planning Department, 146 North Clark, Suite 7, Republic, Washington.	
Thurston County (Unincorporated Areas) (FEMA Docket No. 7258)	
Yelm Creek:	
4,300 feet upstream from the intersection of Crystal Spring and Canal Roads ...	*302
2,500 feet west of Clark Road	*302
At the junction of State Highway 507	*344
1,003 feet upstream of Bald Hill Road	*348
Maps are available for inspection at Thurston County Development Services, 2000 Lakeridge Drive, Southwest, Building 1, Olympia, Washington.	
Yelm (City), Thurston County (FEMA Docket No. 7258)	
Yelm Creek:	
Approximately 4,125 feet downstream of Crystal Springs Road	*302
Approximately 175 feet downstream of the Burlington Northern Railroad ..	*331
Approximately 2,400 feet upstream of 103rd Avenue ...	*343
Maps are available for inspection at the City of Yelm Planning Department 105 Yelm Avenue West, Yelm, Washington.	

[1] None.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: February 6, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–3533 Filed 2–11–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[CS Docket No. 98–201; FCC 99–14]

Satellite Delivery of Broadcast Network Signals under the Satellite Home Viewer Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to petitions for rulemaking filed by the National Rural Telecommunications Cooperative (NRTC) and EchoStar Communications Corporation (Echostar) in connection with the Satellite Home Viewer Act, this Report and Order amends the Commission's rules to provide a procedure for measuring television signal strength at an individual location, such as a household. The Report and Order also endorses a model to predict signal intensity at individual households. The intended effect is to better identify those households that are ''unserved,'' for purposes of the SHVA.

EFFECTIVE DATE: February 12, 1999.

FOR FURTHER INFORMATION CONTACT: Donnie Fowler at (202) 418–7200 or via internet at dfowler@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, FCC 99–14, CS Docket No. 98–201, adopted February 1, 1999 and released February 2, 1999. The full text of this Notice is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC 20554, or may be purchased from the Commission's copy contractor, International Transcription Service (''ITS''), (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036, or may be reviewed via internet at <http://www.fcc.gov/Bureaus/Cable/News_Releases/1999/nrcb8022.html>. For copies in alternative formats, such as braille, audio cassette or large print, please contact Sheila Ray at ITS.

Paperwork Reduction Act

The requirements adopted in this Report and Order have been analyzed with respect to the Paperwork Reduction Act of 1995 (the ''1995 Act'') and found to impose new or modified information collection requirements on the public. The Commission has requested Office of Management and Budget (''OMB'') approval, under the emergency processing provisions of the 1995 Act (5 CFR 1320.13), of the information collection requirements contained in this Report and Order.

OMB Approval Number: 3060–0863.

Title: Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act.

Type of Review: Revision of a currently approved collection.

Respondents: Business and other for-profit entities.

Annual Number of Respondents: 848.

Estimated Time Per Response: 30 minutes.

Frequency of Response: On occasion.

Total Annual Burden to Respondents: 125,000 hours.

Total Annual Cost to Respondents: $12,500.

Needs and Uses: The information gathered as part of Grade B signal strength tests will be used to indicate whether consumers are ''unserved'' by over-the-air network signals. The written records of test results will be made after testing and predicting the strength of a television station's signal. Parties impacted by the test results will be consumers; parties using the written test results will primarily be the satellite and broadcasting industries.

Title: Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act.

Synopsis of Report and Order

Introductory Background

1. In this proceeding, we address an issue involving the television broadcast industry, the direct-to-home satellite industry, and consumers who subscribe to satellite carriers for their video programming. Over nine million households subscribe to satellite carriers, and roughly one third of these subscribers pay an additional subscription fee to receive broadcast network programming via satellite. Broadcasters contend that many of these broadcast network subscribers, as well as many potential subscribers, are not eligible under the 1988 Satellite Home Viewer Act (''SHVA'') to receive such programming using their home satellite service.

2. The broadcast television industry has the right, through the Copyright Act and private contracts, to control the distribution of the national and local programming that it transmits. In 1988, Congress adopted the SHVA as an amendment to the Copyright Act in order to protect the broadcasters' interests while simultaneously enabling satellite carriers to provide broadcast programming to those satellite subscribers who are unable to obtain broadcast network programming over-the-air. (17 U.S.C. 119 (1998), the SHVA

is part of a copyright law.) Congress considered these subscribers to be ''unserved'' by their local stations (to be considered ''unserved,'' the SHVA also requires that the household not have subscribed to cable in the previous 90 days). A Miami federal district court has recently acted to enforce this law by issuing two nationwide injunctions requiring the satellite carriers to terminate network service to as many as 1 million subscribers by February 28, 1999 and to more than 1 million additional subscribers by April 30, 1999. Many satellite subscribers have contacted the Commission to express concern over this imminent termination of service and have asked for the Commission's assistance to reduce the impact of the court's injunctions. The broadcast industry has urged the Commission not to take any action that will undermine the court's decision or harm broadcasters and, consequently, the viewers who rely on local broadcast stations. Two satellite carriers, the National Rural Telecommunications Cooperative (''NRTC'') and EchoStar Communications Corporation (''EchoStar''), filed petitions for rulemaking with the Commission asking us to amend our rules to help those subscribers who face termination.

3. In response, the Commission issued a Notice of Proposed Rule Making, Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act, (''NPRM'') on November 17, 1998 (63 FR 67439, December 17, 1998), and announced that it expected to complete this rulemaking before the first wave of satellite subscribers have their network programming via satellite terminated at the end of February, 1999. As stated in the NPRM, the Commission's statutory authority under the SHVA is limited so that, regardless of action by the Commission, most of the satellite subscribers affected by the injunction are likely to have their satellite-delivered network programming discontinued. The court has determined that the vast majority of subscribers are not within the scope of Congress' copyright authorization because they are able to receive broadcast network programming over-the-air.

4. The Commission's role in this matter originates in a provision in the SHVA that links the definition of ''unserved households'' to a Commission definition of television signal strength known as ''Grade B intensity.'' The critical question under the SHVA and in this rulemaking is whether a household is able to receive a television signal of this strength.

5. The goal of this rulemaking is to identify more accurately, and consistent with the SHVA, those consumers who can and cannot receive their local broadcast network stations over-the-air. The Commission's actions advance this goal, but cannot satisfy every consumer who wants to receive broadcast network stations via satellite. Congress has granted the Commission only limited authority to act in this area. We have also sought to promote competition among multichannel video programming distributors, to the extent possible under the SHVA, and we have considered the role that local broadcasters play in their communities. Increasing competition among MVPDs was not an express goal of Congress in enacting the SHVA however. Several members of Congress, however, have recently suggested that changes to the statute could help open markets and provide consumers with more choices. Through hundreds of e-mails, letters, and phone calls, consumers have expressed frustration at being unable to choose a satellite service that provides broadcast network stations, although it is unclear how many of these consumers do receive terrestrially delivered broadcast signals of Grade B intensity.

6. To give the satellite industry, broadcast industry, and consumers a uniform method for determining the signal strength a household actually receives, the Commission in this Order adopts a method for measuring Grade B signal strength at individual households. The measurement rule takes effect upon publication in the **Federal Register**. The expedited effective date for this rule is warranted in light of the permanent injunction scheduled to take effect on February 28, 1999, which will affect 700,000–1,000,000 satellite subscribers. To the extent parties may seek the court's permission to use the new measurement methodology promulgated in this Order, as well as the prediction model endorsed by the Commission, the expedited effective date will facilitate the court's review of such requests. The Commission has requested permission from the Office of Management and Budget for expedited clearance for the Paperwork Reduction Act. We expect that this rule will provide the uniformity and certainty needed to eliminate many of the controversies that currently surround compliance with the SHVA. We believe, consistent with what commenters on all sides of this issue have requested, that the measurement methodology is practical, reasonably accurate, and relatively inexpensive.

7. In this Order the Commission also endorses a computer model to predict whether a household is likely to be able to receive a signal of the required strength. Although the Commission does not have the authority to mandate use of this model in connection with the SHVA, this recommendation gives the broadcast and satellite industries, as well as consumers, a means of determining eligibility for satellite-delivered network service that minimizes the need for on-site testing. The predictive model is familiar to the broadcast and satellite industries and is publicly available for use at this time. It should provide a degree of dependability and assurance that will alleviate some of the confusion and cost that has contributed to consumer dissatisfaction.

8. This Order, therefore, addresses three major issues. First, we consider whether we can and should change the definition of a signal of Grade B intensity. We decline to do so in this proceeding. Second, we consider and adopt a standardized method for measuring the strength of television signals at individual locations. Third, we consider endorsing a method for predicting the strength of television signals at individual locations that could be used in place of actually taking measurements. The prediction method that we endorse could be used to create an accurate evidentiary presumption of acceptable television service or lack of service. Importantly, the effect of this Order is not to increase the number of unserved households that already exist, nor to reduce the size of local stations' markets by subtracting viewers who are able to receive their signal. Rather, we have developed measurement and prediction tools that more accurately identify those households that are truly unserved within the meaning of the SHVA.

A. The Satellite Home Viewer Act

9. In the SHVA, Congress created a limited exception to the exclusive programming copyrights enjoyed by television networks and their affiliates because it recognized that some households were unable to receive network station signals directly over the air. The exception is a narrow compulsory copyright license (17 U.S.C. 119(d)(2)) that direct-to-home (DTH) satellite video carriers may use to provide certain television network stations to subscribers who live in ''unserved households.'' The SHVA was originally adopted in 1988 to cover satellite service via C-Band before ''direct broadcast satellite'' (''DBS'') existed. Congress amended the SHVA in 1994 when DBS was just reaching the market. After DBS was introduced in

mid-1994, it gained 6.5 million subscribers in the first 32 months. Currently, direct-to-home (''DTH'') satellite services, which include C-Band, DBS, and medium power Ku-band services, have more than nine million subscribers. The success of the DBS industry benefits consumers by providing greater choice among multi-channel video programming distributors (''MVPD''). However, as the number of satellite subscribers has increased, so has the tension that is inherent in the SHVA regarding those who are eligible to receive network programming via satellite and those who are not.

10. The term ''unserved household,'' as relevant here, is defined by SHVA as a household that: ''cannot receive, through the use of a conventional outdoor rooftop receiving antenna, an over-the-air signal of grade B intensity (as defined by the Federal Communications Commission) of a primary network station affiliated with that network.'' (17 USC 119(d)(10(A)). The SHVA is enforced through private actions filed in the federal court system. In such actions, the satellite carrier has the burden of proving ''that its secondary transmission of a primary transmission by a network station is for private home viewing to an unserved household.''

11. The Satellite Home Viewer Act limits the compulsory copyright license to ''unserved'' households, reflecting Congress'' intent to protect the role of local broadcasters in providing free, over-the-air television to American families. Localism has been a central principle of broadcast policy since the Radio Act of 1927. Broadcasters must serve their communities by providing programming (e.g., news, weather, and public affairs) to meet the needs and interests of those communities. Congress was concerned that without some copyright protection, the economic viability of those local stations affiliated with national networks might be jeopardized, thus undermining one source of local information.

12. The SHVA has two purposes: (1) to make broadcast network programming via satellite available to those households beyond the reach of a local affiliate, and (2) to protect the integrity of the copyrights that make possible the existing free, over-the-air national network/local affiliate broadcast distribution system. This Order addresses, within the boundaries of the Commission's authority, the conflicts that arise between these dual purposes.

Grade B Contours and Signal Intensity

13. The Grade B signal intensity standard, which is the key to the SHVA's definition of ''unserved households'' in Section 119(d)(10)(A), is a Commission-defined measure of the strength of a given television station's over-the-air signal. This standard was developed in the early days of television as a key component of the Commission's channel allotment protocol. Generally, if a household receives a television signal of Grade B intensity, it should receive an acceptable television picture at least 90% of the time. More specifically, Grade B represents a field strength that is strong enough, in the absence of man-made noise or interference from other stations, to provide a television picture that the median observer would classify as ''acceptable'' using a receiving installation (antenna, transmission line, and receiver) typical of outlying or near-fringe areas.

14. The Grade B values (which represent the required field strength in dB above one micro-volt per meter) are defined for each over-the-air television channel in Section 73.683 of the Commission's rules. There are also Grade A and ''city grade'' field strength values, which represent stronger signals. Because they are stronger, Grade A contour and city grade service are generally found closer to a station's transmitter (47 C.F.R. 73.683 and 73.685):

	Grade B dBu	Grade A dBu	City Grade dBu
Channels 2–6	47	68	74
Channels 7–13	56	71	77
Channels 14–69	64	74	80

The Grade B values assume that the antenna used to receive the signal has a 6 db gain for channels 2–13 and an antenna with a 13 db gain for channels 14–83. Section 73.684 contains the Commission's ''traditional'' methodology for predicting station service coverage, and Section 73.686 describes a procedure for making field strength measurements to determine the likelihood that a signal is available in an area or community. Section 73.622(e) describes different values for evaluating field strength in connection with digital television (DTV) service.

15. The Commission developed the Grade B standard in the 1950s and has used it in a variety of contexts, many of which were not envisioned at the time it was created. The primary purpose for creating the Grade B standard was to estimate the extent of a television station's coverage area. Grade B service areas, or contours, are still used for this purpose and predict that the best 50% of locations along the outer edge of a contour should get an acceptable television picture at least 90% of the time. When a particular location receives a signal of Grade B intensity 50% of the time, it is, in fact, receiving a signal strong enough to provide an acceptable television picture 90% of the time. The use of the Grade B construct for determining whether an individual household is unserved under the SHVA was not at issue when the standard was created, although it is the primary issue in this rulemaking and related lawsuits.

The PrimeTime 24 Lawsuits

16. The most far-reaching lawsuit between satellite carriers and broadcasters over the unserved households definition is in the United States District Court for the Southern District of Florida. In that litigation, CBS, Inc. et al. v. PrimeTime 24 Joint Venture (9 F.Supp.2d 1333 (S.D. FL., May 13, 1998)), the plaintiff television networks (CBS and Fox) and several affiliates brought a copyright infringement action against PrimeTime 24, a satellite carrier, for retransmitting distant network programming to satellite dish owners in violation of the SHVA. The plaintiffs alleged that PrimeTime 24 distributed the signals of distant network-affiliated television broadcast stations by satellite to subscribers that were not ''unserved households'' within the meaning of the SHVA.

17. Finding that PrimeTime 24 willfully violated the SHVA, the court issued a preliminary and, later, a permanent injunction ordering PrimeTime 24 not to deliver CBS or Fox television network programming to any customer that does not live in an unserved household. The court concluded that ''the great majority'' of

PrimeTime 24's subscribers are capable of receiving at least a signal of Grade B intensity using a conventional outdoor rooftop antenna. According to the court, PrimeTime 24 has ''simply ignored'' the objective Grade B signal standard in signing up ''unserved'' customers and had failed to meet its statutory burden of proving that its subscribers were eligible for network service via satellite.

18. The court outlined methods for predicting and measuring signal intensity for identifying unserved households and required PrimeTime 24 to use them. Specifically, PrimeTime 24 was enjoined from providing CBS or Fox network programming ''to any customer within an area shown on Longley-Rice propagation maps, created using Longley-Rice Version 1.2.2 in the manner specified by the Federal Communications Commission (''FCC'') in OET Bulletin No. 69, as receiving a signal of at least grade B intensity of a CBS or Fox primary network station, without first either (i) obtaining the written consent of the affected station(s) * * * or (ii) providing the affected station(s) with copies of signal intensity tests showing that the household cannot receive an over-the-air signal of grade B intensity as defined by the FCC from any station of the relevant network.'' (See CBS et al. v. Primetime 24, Permanent Injunction, slip op. at 2.) The court ruled that the signal intensity test requires at least 15 days advance notice to each affected station and outlined a specific procedure that the tester must follow at each household within a station's area, as predicted by the Longley-Rice map. The court also imposed the SHVA's ''loser pays'' regime on the testing procedure, whereby the loser to a challenge of a subscriber's eligibility pays the costs of the test.

19. The preliminary injunction is scheduled to take effect on February 28, 1999, and the permanent injunction is scheduled for April 30, 1999. The preliminary injunction could result in the termination of network signals to the estimated 700,000 to one million subscribers nationwide who subscribed to PrimeTime 24 after the networks filed their lawsuit on March 11, 1997. The permanent injunction, which applies to the PrimeTime 24 customers who subscribed before March 11, 1997, could affect an additional 1.5 million subscribers nationwide. The total number of PrimeTime 24 subscribers affected could therefore reach 2.2–2.5 million.

20. In a similar lawsuit, a Raleigh, North Carolina, federal district court ruled against PrimeTime 24 and in favor of a local ABC affiliate (ABC, Inc. v. PrimeTime 24, 17 F.Supp.2d 467 (M.D. N.C., July 16, 1998)). The court issued a permanent injunction on August 19, 1998 that applies to all subscribers living within the affiliate's predicted Grade B contour of the affiliate's transmitting tower. The court found that the SHVA defines unserved households and Grade B using objective standards, and stated, ''PrimeTime's screening procedures have systematically substituted a subjective inquiry into the quality of the picture on a potential subscriber's television set for any signal strength showing. PrimeTime has ignored or turned a blind eye to the necessity of objective signal strength testing and thus willfully or repeatedly provides network programming to subscribers under SHVA.'' (See ABC, Inc. v. PrimeTime 24, 1998 WL 544297, *2.) The court found a ''pattern and practice of willful or repeated copyright infringement'' and therefore enjoined transmission within the ''locality or region'' as is provided for in the enforcement provisions of the statute. PrimeTime 24 has provided network services to as many as 35,000 households in the ABC affiliate's Raleigh/Durham market. At the time of the court's decision, PrimeTime 24 continued to serve more than 9,000 subscribers within the affiliate's Grade B contour.

21. Several other lawsuits have been filed by both broadcasters and satellite carriers. In Amarillo, Texas, an NBC affiliate has sued PrimeTime 24 in federal district court in a case that still awaits judgment. In Denver, Colorado, EchoStar filed suit against CBS, Fox, NBC, and ABC on October 19, 1998 in federal district court. EchoStar has asked the court to find that the Commission has never endorsed a particular model for predicting or measuring Grade B intensity for the purposes of the SHVA. Echostar wants the court to declare that a viewer's own opinion of the quality of his or her signal is adequate for determining whether that home is unserved under the SHVA, and asks the court to endorse a predictive model for identifying served households such that 95% of households receive a Grade B signal 95% of the time with a 50% degree of confidence. The networks followed EchoStar's action by countersuing in Miami. No decisions have been issued in either EchoStar case.

The NRTC and EchoStar Petitions

22. In its petition for rulemaking, the NRTC, a distributor of DirecTV DBS service, has asked the Commission to adopt, exclusively for purposes of interpreting the SHVA, a new definition of ''unserved'' that includes all households located outside a Grade B contour encompassing a geographic area in which 100 percent of the population receives over-the-air coverage by network affiliates 100 percent of the time using readily available, affordable receiving equipment. EchoStar, which is a provider of DBS service, urges the Commission in its petition to adopt a prediction model to locate unserved households. EchoStar endorses a model that predicts an area where 99 percent of households receive a Grade B signal 99 percent of the time with a 99 percent confidence level. EchoStar also urges adoption of a methodology for measuring signal strength that more closely reflects the signal that a viewer's television set actually receives. It argues that a number of flaws exist in the current measurement and prediction processes when they are used for purposes of the SHVA. After receiving comment on these Petitions, the Commission issued the NPRM in this proceeding.

Analysis

23. The SHVA's concern with adequate television signal intensity at individual households, rather than across broad areas, is central to this rulemaking. This important distinction leads us to consider measurement and prediction methodologies that have a different purpose from the methodologies for determining Grade B service areas. The definition of an unserved household as ''a household that cannot receive * * * a signal of Grade B intensity'' most logically refers to television signal reception at an individual household and reflects a concern for individual viewers that is not at issue in most applications of the Grade B standard. Moreover, when Congress created the limited compulsory license, it clearly intended to help individual consumers who are unable to receive an acceptable, over-the-air television picture. In a report accompanying the 1994 reauthorization of the SHVA, the House stated that ''households that cannot receive over-the-air broadcasts or cable can be supplied with television programming via home satellite dishes.'' The Senate, in its 1994 report, stated that the restriction on satellite delivery of network signals refers to ''subscribers [who] are unable to receive the signal of a particular network.'' And when originally adopted in 1988, the House stated, ''The distribution of network signals is restricted to unserved households; that is, those that are unable to receive an adequate over-the-air signal.''

The Commission's Role and Responsibility Under the SHVA

24. The NPRM raised issues regarding the scope of the Commission's authority to conduct this rulemaking and involve itself in matters related to the SHVA. The comments reflect a wide range of opinion regarding the Commission's authority to act.

25. Questions concerning the Commission's role and responsibility with respect to this matter arise on two levels. Several commenters assert the Commission should elaborate on the objectives of the SHVA or change its administration to help satellite carriers become more competitive with cable television systems. While increased competition among service providers is an important and longstanding goal of the Commission, we cannot make it a primary goal of this proceeding. The SHVA is a copyright law designed to balance owners' and users' rights. It is not a communications law with an express purpose of increasing competition among MVPDs. The SHVA is primarily administered by the Copyright Office and enforced by the federal courts, and contains the basic Congressional decisions regarding how and to whom satellite distributed network broadcast signals are made available. We may not change the policy behind the law, nor may we go beyond two terms Congress used in defining ''unserved households.'' First, Congress explicitly incorporated the Grade B standard into the definition, so only Congress may consider the use of another measure. Second, the law demands that a consumer be unable to receive a television signal ''using a conventional outdoor rooftop antenna'' before qualifying as unserved. We may not change that requirement, nor may consumers ignore it.

26. In addition, there are questions about the Commission's specific authority to interpret and amend the Grade B standard, whether for all purposes or only for the SHVA. We continue to believe, as the NPRM preliminarily concluded, that the Commission has the authority to change the definition of a signal of Grade B intensity as a general matter.

27. We conclude that Congress did not freeze the Grade B rules in place when it enacted the SHVA. Congress gave the Commission a continuing role when it defined ''unserved households'' as those that cannot receive ''an over-the-air signal of Grade B intensity (as defined by the Commission).'' When it incorporated Grade B into the definition of ''unserved households,'' Congress did not incorporate specific values, such as the dBu levels the Commission uses in section 73.683. Moreover, nothing in the SHVA itself or its legislative history indicates that Congress intended to freeze the value of Grade B when it passed the law in 1988 or when it renewed it in 1994. When Congress has chosen to freeze Commission regulations for other purposes, it has explicitly done so. For example, Congress expressly referenced rules ''in effect on April 15, 1976'' when it froze in place regulations relating to copyright compulsory licensing. No such reference exists here. Case law also supports the proposition that the meaning of ''signal of Grade B intensity'' was not frozen when the SHVA was enacted. For example, the Supreme Court has held that ''[i]t is of course not true that whenever Congress enacts legislation using a word that has a given administrative interpretation it means to freeze that interpretation in place.'' (Lukhard v. Reed, 481 U.S. 368, 379 (1989)). The Supreme Court reasoned that if legislation so constrained an agency's ability to conduct rulemaking under its enabling legislation, then ''the result would be to read into the grant of express administrative powers an implied condition that they were not to be exercised unless, in effect, the Congress had consented. We do not believe that such impairment of the administrative process is consistent with the statutory scheme which the Congress has designed.'' (Helvering v. Wilshire, 308 U.S. 90, 101 (1939).)

28. Although we conclude that the Commission has the authority to modify Grade B intensity values for all purposes, we believe that it is significant that Congress tied the SHVA compulsory license to the Commission's Grade B standard, which was and is used for a multiplicity of purposes. We think Congress' use of the widely used Grade B standard in the SHVA indicates that we should not adopt a separate Grade B intensity standard for purposes of the SHVA alone. Moreover, additional considerations also lead us to conclude that it would be inadvisable to adopt a separate Grade B standard for SHVA purposes. As discussed below, a second set of signal strength values, also called ''Grade B signal intensity,'' is likely to create confusion for the broadcast industry and others affected by Commission regulations.

Defining a Signal of Grade B Intensity

29. The SHVA uses an objective standard to determine whether a household is ''unserved'' and thus permitted to receive broadcast network signals via satellite. SHVA's criterion is whether the household can receive ''through the use of a conventional outdoor rooftop receiving antenna, an over-the-air signal [of a particular network station] of grade B intensity (as defined by the Federal Communications Commission).'' By incorporating the objective Grade B signal intensity standard into the SHVA, Congress declined to account for viewers' individual subjective opinions about the quality of their television reception, as well as the adequacy of the household's existing antenna. Use of the Grade B signal intensity standard in the SHVA both invites and limits the Commission's involvement with this statute. The reference to Grade B signal intensity ''as defined by the Federal Communications Commission'' brings the Commission's rules and our interpretations of our rules into play. But, by using Grade B signal intensity to define unserved, the SHVA also limits what the Commission can do to address any drawbacks to this standard. The Grade B signal intensity values were used in the SHVA as an available objective benchmark for determining whether a household is ''served.'' While those values may have proven difficult to apply in practice as the sole standard for determining whether a household is unserved, this is the standard in the statute and must be employed here when distinguishing served and unserved households.

30. The Commission's rules define values for Grade B signal intensity in connection with authorizing television stations and the stations' service areas or ''contours.'' It was not, however, created for evaluating picture quality in individual households. Rather, the system was developed to address the very different and difficult problem of creating station service areas and to determine the proper allocation of television channels in the early days of television. (See Television Broadcast Service, Third Notice of Further Proposed Rule Making, 16 FR 3072 (1951) and Sixth Report and Order, 41 FCC 148 (1952).) The Commission created two ''grades of service.'' The specifications for ''Grade A'' and ''Grade B'' service were established so that ''a quality acceptable to the median observer is expected to be available for at least 90 percent of the time at the best 70 percent of receiver locations at the outer limits of [Grade A] service. In the case of Grade B service the figures are 90 percent of the time and 50 percent of the locations.'' The service areas were established to effectuate the Commission's stated twofold purpose ''to provide television service, as far as possible, to all people of the United

States and to provide a fair, efficient and equitable distribution of television broadcast stations to the several states and communities.'' The signal intensity values (also referred to as ''field strengths'') were determined based on certain assumptions, which differ for the Grade A service area, which is urban and suburban, and the Grade B service area, which is rural. For example, the type of receiving antenna assumed for Grade A service is smaller than the receiving antenna assumed for Grade B, and the terrain assumed for Grade A differs from that assumed for B.

31. The ''acceptable quality'' contemplated in these early Commission Orders was based on quality levels developed by the Television Allocation Study Organization (''TASO''). TASO used data from actual viewers. These viewers were shown television pictures and were asked to rate them on a scale from 1 (excellent) to 6 (unusable). Level 3, on which the Grade B service level was based, was defined as ''(Passable)—The picture is of acceptable quality. Interference is not objectionable.'' Based on the results of viewer ratings, a specific signal (or carrier) to noise ratio at the television receiver was found to be associated with the grade 3 level—that is, a level of signal that the median observer identified as acceptable. In association with this level of acceptable quality, and with the primary goal of creating service areas with minimal interference and maximum coverage, the Commission developed assumptions, generally described as planning factors, regarding the environment in which viewing would take place. Assumptions were made as to the quality of the television receiver used focusing on the amount of electrical noise created in the tuner, the signal losses that take place in the wire connection from the receiver to the antenna, the nature (gain, directionality, and height) of the antenna to be used, and the amount of electrical noise in the environment that the signal would have to overcome to be viewable. Because radio signal propagation varies over time, certain statistical assumptions were built into the definitions used, including the assumption that the signal in question would be of acceptable quality to the median observer at least 90 percent of the time.

32. The comments submitted by the satellite industry and consumers urge vigorously that for many people the existing Grade B signal intensity values do not equate to truly acceptable picture quality. The first attack on the existing standards has to do with the possibility that viewers' expectations as to signal quality have increased over time. If this were the case, a stronger signal would be needed to produce a picture that would now be regarded as acceptable. Although there is some speculation in the comments that viewer expectations have indeed changed, no current study documents this or replicates the initial TASO study that correlated viewer judgments of television picture quality with specific signal levels. In response to contentions that the current values for Grade B signal intensity are erroneous because they were based on viewer evaluations of monochrome images, we note that the planning factors established in April 1952 (Doc. 8736) were revisited in 1959 by TASO, which was established in response to a Commission request to study the technical principles which should be applied in television channel allocations. TASO studied these issues for two years, used 21 inch monochrome and color television sets, and essentially confirmed the same carrier to noise ratio as was established earlier. Research on subjective evaluations of television pictures may show that viewers have raised their level of expected performance, but the results of any subjective testing are dependent on the testing methodology and conditions. Many of the recent tests were conducted by cable television sponsors using viewers who may have expected to pay for these better pictures.

33. In addition to suggesting that viewer expectations are different, it is also argued that radio frequency noise in outlying areas has increased so that rural areas are today more akin to urban areas of the 1950's, that the typical household now has multiple television receivers necessitating antenna lead splitters that increase line loss, and that antenna gain figures (particularly in the UHF frequencies) should be re-evaluated. We believe that the technology of receivers and antennas has kept pace with changing consumer expectations and with increased noise. Thus, it is necessary to consider the totality of changes that have taken place over the past fifty years. In the 1950s low cost electronic technology at television frequencies was hard to find. Therefore, the planning factors had to be set low enough to ensure that television sets could be affordable by the public. The noise figure used in the planning factors serves as a good example. The noise figure is a measure of the amount of electronic noise produced by the components in the television. This must be added to the signal budget just like man-made noise and must be overcome to produce a passable picture. In the 1950s, the television tuner technology consisted of low cost noisy tubes and attached components. Today, this technology has progressed to modern solid state components that produce lower set noise. Thus, although many developments have taken place since the standards were first adopted, it is not clear that increases in the values involved are warranted.

34. We conclude that the record in this proceeding provides an inadequate basis for changing the Grade B signal intensity values either generally or for purposes of the SHVA specifically. First, the evidence in the record suggests that some of the environmental and technical changes that have taken place trend in opposite directions and tend to cancel each other out. The Commission has examined the adequacy of the Grade B standard on several occasions since it was adopted in the 1950s, and in each case has decided not to make changes.

35. Second, we do not believe that we have the authority to create a special Grade B solely for the purpose of the SHVA, nor do we believe this is an advisable approach to take. Establishing another set of values, also called Grade B, is likely to create confusion for the broadcast industry. It would risk harm to the network/affiliate relationship by creating an implication that another, different Grade B definition might be more suitable for other situations that are not contemplated in this proceeding. In addition, raising the values for Grade B such that they would equal or exceed the Grade A values may require reevaluation of the Grade A values, as well. The significant and widespread ramifications of changing these definitions demand that we have a more complete and conclusive record, and more time to evaluate the record, than we have in this rulemaking.

36. Finally, some commenters raise concerns regarding the ability of the existing standard to address interference and other signal impairments. Although we are not changing the Grade B values, it is important to note that as a matter of general policy we agree that the Grade B standard incorporated by Congress into the SHVA implicitly includes within the definition a signal that is, in fact, viewable and not one so impaired by interference as to be degraded below the ''acceptable to the median'' observer level. While such problems can be identified by qualified engineering personnel through actual observations, this is not a matter, as satellite commenters in this proceeding acknowledge, that can be resolved by simply adjusting the dBu levels involved. No readily usable mechanism

for addressing this matter through changed definitions has been identified in the comments.

Measuring Television Signal Intensity at Individual Locations

37. For the SHVA to function more effectively, a relatively low cost, accurate, and reproducible methodology for measuring the presence of a Grade B intensity signal at an individual household is especially important. Individual testing is the key mechanism under the SHVA for proving that a specific household is unserved and, therefore, eligible to receive satellite delivery of network affiliated television stations. The Commission's rules include a method for measuring signal intensity for describing a station's service area or for propagation analysis, but they have not included a method for measuring signal intensity at a discrete location, such as an individual household. The method created in this Order and included in the Commission's rules balances accuracy, affordability, and simplicity.

38. The Commission's current signal measurement method, requiring a so-called 100-foot mobile run, is inadequate for the purposes of the SHVA. The method typically involves a truck with a 30-foot antenna that takes continuous measurements as it travels a distance of 100 feet (47 CFR 73.686(b)(2)). Under Commission rules, the antenna must be rotated to the best receiving position, and engineers must record factors that might affect signal intensity, such as topography, height and type of vegetation, buildings, obstacles, and weather conditions. If overhead obstacles prevent a 100-foot run, a cluster of five measurements may be taken at locations within 200 feet of each other. Testing can cost several hundred dollars each time it is performed—an expensive proposition for a satellite company or a consumer who wants to prove that a household is unserved by over-the-air signals. When multiplied over hundreds of households in a station's service area, the cost may become prohibitive and may preclude many truly unserved consumers from receiving broadcast network service. Mitigating the costs of the procedure, without sacrificing the integrity of the testing results, is an important goal of the new signal measurement methodology.

39. In addition to the difficulties inherent in the existing measurement test, many of its assumptions do not hold in individual situations. The purpose of the procedure currently specified in the rules is not to determine the receivability of a signal at a single spot, but to determine, through measurements at a series of grid intersections over a community, the nature of service to the community. Thus, the current procedure has limited use in measuring signal intensity at individual locations. For example, many homes do not have antennas 30 feet above the ground, especially if they are one-story homes. The definition of unserved household only describes reception over a conventional outdoor rooftop receiving antenna, so requiring measurements on a 30-foot antenna may not reflect what is ''conventional'' at all locations around the country. Finally, requiring tests and a 100-foot mobile run ignores the fact that homes are stationary and that reception may vary considerably over a mobile run on a nearby street.

40. Because the SHVA is concerned with adequate television signals at individual households, it is entirely proper that the Commission, as the originator of the Grade B standard, develop an objective way to measure whether or not that standard exists at a particular location. In short, the methodology requires a tester to make at least five measurements in a cluster as close as possible to the location being tested. The median value of the measurements will be the signal intensity at the location. In deciding on which measurement methodology to adopt, we examined the following factors, discussed in detail below—the type of testing antenna and equipment, where and how many measurements should be taken, the effect of time and weather on signal strength, the height the testing antenna should be raised, the orientation of the testing antenna, and what information should be recorded. (See rule section, 47 CFR 73.686(d).)

41. Regarding the preparation for measurements, we considered the kind of testing antenna that should be used and conclude that a tuned half-wave dipole is the best choice. (A dipole is a wire or telescoping metallic antenna consisting of two straight collinear conductors of equal length separated by a small gap where the transmission line is attached. The ''rabbit ears'' on a television set are a type of dipole.) The dipole is widely available, inexpensive, and simple to use. In situations where definite readings are required, it has advantages over gain antennas that are difficult to characterize (calibrate) over a wide range of frequencies. Although dipole antennas are susceptible to interference from signals other than the one being measured, the cluster measurements that we require will mitigate those effects.

42. We considered where the signal measurements should be taken—on the roof, in the yard, as close as possible to the house, in the driveway, or at the nearest public road. We conclude that the measurements should be taken in a cluster as close as possible to a reasonable and likely spot for the receiving antenna. In doing so, we do not require testers to climb up to the roof or trespass on property where they are denied permission to enter. Although we recognize, as the satellite carriers argue, that measurements taken at the television receiver would most accurately reflect the picture that a consumer watches, such an approach would be inconsistent with the intent of the SHVA, which requires the use of an outdoor rooftop antenna. Measurements at the television receiver are inappropriate for determining the ambient signal intensity available at a household's roof.

43. We considered how many measurements are necessary and conclude that at least five measurements must be taken, each at a pre-determined spot. Multiple readings are necessary because a single reading may give misleading results. Reflections from surrounding objects could cause a reading to be either higher or lower than normal. Multiple readings will tend to mitigate these effects. The spots must be chosen before measurements are taken to prevent gaming of the results. They must be a minimum distance of three meters from each other, an appropriate spacing to enable reasonably accurate results. To help ensure the objectivity of the tests, we suggest that, if possible, the first testing point should be chosen as the center point of an imaginary square whose corners are the four other spots. The tester shall calculate and report the median of the measurements (in units of dBu) as the measurement results. For purposes of the SHVA, this median measurement will determine whether a household is unserved. If signals of more than one transmitter (e.g., more than one television station) are being tested, the tester shall use the same spots for all the measurements.

44. Regarding measurement procedure, we believe that a one-time measurement is sufficient to determine the signal intensity at individual locations. Satellite carriers and broadcasters appear to agree with this conclusion. We recognize that several measurements over time may determine even more accurately the actual signal intensity at individual locations, but we have sought to create a testing methodology that is both accurate, practical, and relatively inexpensive.

45. We require the tester to measure the field strength of the visual carrier with a calibrated instrument with a bandwidth of at least 450 kHz, but no greater than one megahertz. The tester must perform an on-site calibration of the instrument in accordance with the manufacturer's specifications. The instrument must accurately indicate the peak amplitude of the synchronizing signal. The tester must use a shielded transmission line between the testing antenna and the field strength meter. The tester must match the antenna impedance to the transmission line, and, if using an unbalanced line, employ a suitable balun. Finally, the tester must account for the transmission line loss for each frequency being measured.

46. We considered the effect that time and weather have on signal strength. Generally, neither time nor steady-state conditions of weather have an appreciable effect on broadcast television frequencies. However, in inclement weather or when major weather fronts are moving through the measurement area, some noticeable consequence may result. The tester should not take measurements at such times.

47. We considered the effect that signal interference has on the strength of the primary signal being measured. We have not found an easily reproducible, practical or cost-effective objective process for measuring interference that impairs reception. Adding expense and complication to the testing methodology would be inconsistent with our goal of creating a practical and economical measurement method. While we recognize that interference can make signals unviewable at a given location, and thus ideally issues of this nature should be reviewed as part of the standard measurement process, the only current way to include these factors is for all interested parties to undertake a common subjective evaluation at the test site and make a common judgment on the issue. In the absence of a common subjective judgment, it remains necessary to rely on the standard process that does not take this factor into account. Because common testing cannot be required and because it would add expense to the testing procedure, we believe it would be highly desirable for the parties to develop procedures to address these concerns through waivers or impartial testing personnel. This is especially desirable in those situations where interference is predicted or expected to exist. As discussed below, because all sides acknowledge that interference affects picture quality and because the Longley-Rice prediction model is capable of considering interference in its predictions, we include interference in the version of Longley-Rice that we endorse in this proceeding. In situations where interference is predicted, it is not illogical to give some precedence to the prediction involved since interference can be reliably predicted and should be confirmable by on-site observation, even if not recordable using the standard test procedure. Moreover, where local broadcasters are aware of interference, we expect they will be willing to acknowledge its effects. We believe that the intent of the SHVA will be better realized if parties consider interference when classifying households as served or unserved, and we encourage the engineering community to focus on this issue to improve objective measurement techniques.

48. We considered the height of a ''conventional outdoor rooftop antenna'' so that the tester would know how high to raise the testing antenna. There is evidence that signal intensity varies at different heights above the ground, so the height of the testing antenna could affect whether a household is deemed unserved. Because the SHVA relates to actual ambient signal intensity at individual households, we believe that the height of the individual home is significant and, therefore, relevant when dictating the height of the testing antenna. In the interest of simplicity and consistency, we do not require the tester to raise the antenna to 5 feet above the height of the roof, which would result in measurements taken at an endless variety of heights and would increase dramatically the complexity of the testing and predictive models. We also decline to require that the measurement be taken at 30 feet in all circumstances, primarily because many American homes are one-story households that do not, and would not, erect a 30-foot antenna. We conclude that the tester should raise the testing antenna 20 feet (6.1 meters) above the ground for one-story buildings and 30 feet (9.1 meters) above the ground for buildings taller than one-story. This accounts for most households in the country, while maintaining an easy-to-administer standard. For example, testers will not be required to measure the height of each individual household and they will not have to raise an unwieldy testing antenna that is higher than 30 feet. The 20 foot/30 foot rule is also consistent with at least one agreement between the broadcasters and satellite carriers regarding measuring methodology. We recognize that many households are part of multiple dwelling units (MDUs) that present special problems. We believe that where households have access to a master antenna on the MDU's roof, the test should be made there, if possible. If the MDU has no master antenna, then the test should be made at the household (outside if possible, on a balcony or patio) where the consumer might place a conventional antenna. In some instances, particularly in MDUs taller than three stories, the signal strength may be adequate inside the unit, as with ''rabbit ears'' on the television itself. If the signal intensity is stronger inside the unit, in these cases, the measurement should be taken inside, near the television and using the prescribed testing antenna. We note that MDU residents may require specialized attention due to the differences inherent in large or tall multi-unit buildings. The rulemaking record is largely directed to issues affecting individual homes and does not contain sufficient detail on the MDU issue to address every circumstance here.

49. We considered how the testing antenna should be oriented. The maximum gain of the testing antenna (over an isotropic antenna) should face the strongest signal coming from the transmitter whose signal is being tested. If more than one station's signal is being measured, the testing antenna should be oriented separately for each station. This orientation is consistent with good engineering practice, with the technique required by the Commission's signal measurement rules, and with the PrimeStar/Netlink Agreement on determining eligible households. It is also consistent with the Copyright Act, which defines an unserved household in relation to an individual television station rather than to all network affiliates in a market. Section 119(d)(10) defines unserved household ''with respect to a particular television network'' and states that such a household must be unable to receive the signal of ''a primary network station affiliated with that network.'' Based on this distinction, we believe that signal testers should focus on individual stations. Because one of the primary purposes of this Order is to provide a practical and reliable measurement methodology, we include in the testing procedure the proper orientation, which is essential to ensure the validity and integrity of the signal intensity test.

50. Finally, we considered how to ensure the integrity of the signal tests simply and with as little burden as possible. The tester shall make and maintain a written record of the measurements that includes several items—(i) a list of calibrated equipment

used in the field strength survey, which for each instrument, specifies the manufacturer, type, serial number and rated accuracy, and the date of the most recent calibration by the manufacturer or by a laboratory; (ii) a detailed description of the calibration of the measuring equipment, including field strength meters, measuring antenna, and connecting cable; (iii) for each spot at the measuring site, all factors which may affect the recorded field, such as topography, height and types of vegetation, buildings, obstacles, weather, and other local features; (iv) a description of where the cluster measurements were made; (v) time and date of the measurements and signature of the person making the measurements; (vi) for each channel being measured, a list of the measured value of field strength (in units of dBu and after adjustment for line loss and antenna factor) of the five readings made during the cluster measurement process, with the median value highlighted. We note that slight, unintentional departures from these written procedures will not invalidate a test if there is no basis to believe they affected the outcome.

Predicting Television Signal Intensity at Individual Locations

51. Although the SHVA appears to require actual signal measurements when determining whether households are unserved, broadcasters and satellite carriers often use a predictive model to avoid the costs and difficulties associated with such on-site measurements. However, they do not always agree on which model is most appropriate. Even when parties use the same model, they often disagree on the factors that are considered in that model. For example, different predictive models may or may not account for the effects on signal strength of receiving antenna height, vegetation, ground clutter, buildings, signal interference, or multipathing. Additionally, predictive models may account differently for variability in signal strength over time and location, and may predict signal strength with varying levels of confidence. Also, values for these parameters may be varied within some predictive models.

Usefulness of Predictive Models

52. In the NPRM, we asked whether we could mandate a model for SHVA purposes or merely endorse one. We conclude that predictive models can be effective and helpful proxies for individual household measurements and that we have the authority to develop and endorse a model for making predictions of signal strength at individual locations. The Commission has developed and used predictive models for determining signal intensity in other contexts (e.g., determination of stations' DTV service areas). Two prominent examples are the newer Longley-Rice models and the procedure set forth in Section 73.684 of our Rules for determining traditional Grade B contours using the radio propagation curves for broadcast television set forth in Section 73.699. We believe our position as the originator of the Grade B criterion qualifies us to determine the effectiveness and accuracy of predictive models that relate to it.

53. The difference in taking actual measurements at individual households and using predictive models is significant, because measurement requires time, money, and other resources that often outweigh the benefits. For example, it may cost more for a satellite company to take a measurement than it can recover through subscriber and advertising fees. To avoid these costs, satellite providers may have refused or terminated service to consumers who are actually unserved. Additionally, satellite providers, broadcasters, and consumers have often turned to predictive models that erroneously permit some served households to receive satellite network service, or, conversely, prevent some unserved households from being eligible to receive network stations via satellite. When truly unserved households are deemed ineligible for broadcast network service via satellite, consumers are hurt and the SHVA's intent is thwarted. Likewise, when served households are deemed eligible for satellite-delivered broadcast network service, network affiliates are harmed and the SHVA's intent is also thwarted. We believe the Commission's endorsement of a prediction model will address some of the problems that consumers, as well as the broadcast and satellite industries, encounter when following the SHVA. We expect our endorsement to reduce conflicts regarding which model satisfactorily predicts a household's true status as served or unserved, and we hope that a single model makes it easy for consumers to determine their eligibility for satellite-delivered broadcast network service at the time they subscribe to a DTH satellite service (at the point of sale).

54. We recognize that we speak only as the expert agency on the Grade B construct, not as the primary enforcer of the SHVA. That role belongs to the courts. We also acknowledge that we cannot change satellite carriers' burden under the SHVA of proving that a household is unserved, and use of the predictive model we endorse is discretionary with the parties. While our predictive model need not replace actual measurement, it could serve as a presumption of service or lack of service for purposes of the SHVA. A presumption should make administration of the unserved household rule easier and more cost-effective for both consumers and the industries. Broadcasters and satellite providers should be able to rely on a Commission-endorsed model when deciding whether individual consumers are presumed to be eligible to receive satellite-delivered network signals. Moreover, we recommend that courts accept the model's predictions as sufficient to show that a satellite service provider has carried its statutory burden of showing that a household is unserved. We believe that such an approach is consistent with the Miami federal court's use of one variation of the Commission's Longley-Rice predictive methodology in its injunctions. (CBS v. PrimeTime 24, Final Ruling, slip op. at 49 and Permanent Injunction, slip op., at 2.) Finally, we recommend that the rebuttable presumptions created by our model will be combined with in-court and out-of-court ''loser pays'' mechanisms to help the SHVA operate more smoothly. Such a loser pays scheme would require the loser of any challenge to a predictive model's presumption to pay the costs of an on-site test following the challenge.

Inadequacy of the Traditional Grade B Contour Methodology

55. In the NPRM, we sought comment on the application of existing predictive models in the SHVA context, including our ''traditional'' Grade B contour methodology and the Longley-Rice predictive model. We tentatively concluded that the Commission's traditional predictive methodology for determining a Grade B contour is inappropriate for predicting signal strength at individual locations. Our rules state that this methodology is for three purposes only: (1) estimation of coverage resulting from the selection of a particular transmitter site, (2) problems of coverage related to 47 CFR 73.3555 (ownership restrictions), and (3) determination of compliance with section 73.685(a) concerning minimum field strength over the principal community. The traditional methodology predicts signal strength on the basis of average terrain elevation along radial lines extending only ten miles from a television station's transmitter. The traditional methodology does not accurately reflect

all the topographic differences in a station's transmission area, and explicitly does not account for interference from other signals. These omissions make it an imperfect methodology for predicting whether an individual household can receive an adequate signal.

Longley-Rice Point-to-Point Model for Digital Television

56. We noted in the NPRM that the Commission recently adopted, in the digital television (DTV) proceeding, rules for analyzing TV service areas using a point-to-point prediction method based on version 1.2.2 of the Longley-Rice propagation model. (See 47 CFR 73.622(e) and Advanced Television Systems: Sixth Report and Order (''DTV Sixth Report and Order''), 12 FCC Rcd 14588, 14672–76.) The Longley-Rice model used for analysis of DTV and analog TV service in the DTV proceeding is described in ''Longley-Rice Methodology for Evaluating TV Coverage and Interference,'' OET Bulletin 69, Federal Communications Commission (July 2, 1997) <http://www.fcc.gov/oet/info/documents/bulletins/#69>. Longley-Rice is the Commission's designated methodology for determining where service is provided by a DTV station. We proposed that this variation of Longley-Rice be used to determine Grade B service at individual households. The Longley-Rice propagation model is the most widely-used private means of predicting the existence of a signal of Grade B intensity for SHVA purposes. Although it is similar to the traditional method for determining a Grade B contour, Longley-Rice improves the traditional model by adjusting the predictions for changes in terrain (e.g., hills and valleys between the transmitter and the house) along the entire path from the transmitter to the specified receive site. Thus, while the Commission's traditional contour method often results in smooth concentric circles surrounding a transmission tower, the Longley-Rice method produces rougher outlines that more precisely depict areas of coverage.

A Predictive Model for Individual Locations

57. The model we endorse is a version of Longley-Rice 1.2.2 that we have adapted for predicting signal strength at individual locations. Called ''Individual Location Longley-Rice'' or ''ILLR,'' it is similar to the point-to-point predictive model we established for digital television (DTV) allocations. We believe ILLR is an accurate, practical, and readily available model for determining signal intensity at individual locations. ILLR has several characteristics, discussed in detail below, which make it unique:

- the time variability factor is 50% (when the time variability factor for the predicted field strength is 50%, an acceptable quality picture should be available 90% of the time) and the confidence variability factor is 50%;
- the model is run in individual mode;
- terrain elevation is considered every 1/10 of a kilometer;
- receiving antenna height is assumed to be 20 feet above ground for one-story buildings and 30 feet above ground for buildings taller than one-story;
- land use and land cover (e.g., vegetation and buildings) shall be included when an accurate method for doing so is developed;
- where error codes appear, they shall be ignored and the predicted value accepted or the result shall be tested with an on-site measurement;
- locations both within and beyond a station's Grade B contour shall be examined.

58. We believe the ILLR can be used for predicting signal strength for purposes of the SHVA as well as for other purposes that require information about signal intensity at discrete locations. The model would not supplant currently-existing approaches for depicting a field strength contour or for describing a station's service area. Specifically, the ILLR will not replace the current Commission rules for field strength contours (47 CFR 73.683) or prediction of coverage for non-SHVA purposes (47 CFR 73.684). In fact, the ILLR should not affect a station's Grade B contour or service area, because areas are irrelevant when predicting what signals exist at a particular location. As both satellite carriers and broadcasters have recognized, a predictive model for individual locations might identify unserved households that lay within a station's Grade B contour or, likewise, might identify served households outside a Grade B contour. Importantly, our model should not increase or decrease the number of truly unserved households. The ILLR model, like the on-site measurement, will consider the signal of either the affiliate station or its translator, as appropriate, to determine whether a household is receiving adequate signal strength. The number of unserved households remains finite under any single definition of Grade B intensity, and we do not change that definition here. If a household is unserved in reality, the ILLR prediction model will not change that situation. Likewise, if a household is currently served, the prediction model will not change it to an unserved household. A predictive model of any sort simply reflects reality without actually testing or observing it, and some are better than others at painting the most lifelike picture. The ILLR corrects for the mistakes of less-appropriate and less-accurate models by more precisely identifying households as served or unserved.

Time, Location, and Confidence Factors

59. Predictive models are inherently imperfect because they seek to replicate reality without actually measuring or observing it. These imperfections can be mitigated through statistical means and by varying the ''ingredients,'' or factors, included in any particular model. For example, although signals of Grade B intensity are defined as discrete values measured in dBu, the intensity of broadcast signals at particular locations and at particular times cannot be precisely determined, regardless of the predictive method used.

60. One way to account for these factors is to build them directly into signal strength values. The Grade B intensity levels are actually median signal strengths—i.e., 50% of locations in a particular area should receive a Grade B signal or higher at least 50% of the time. However, this does not mean that 50% of the locations will receive an acceptable picture only 50% of the time. The Grade B values have a built-in time factor so that an acceptable picture is predicted at least 90% of the time. For example, a signal strength of 41 dBu equals an acceptable picture for channels 2–6. To ensure that a location receives such a signal 90% of the time, the Grade B value for those channels, 47 dBu, includes an extra time factor of 6 dBu. Thus, although a location receiving a Grade B signal of 47 dBu will only get that signal 50% of the time, that same location will receive a 41 dBu signal 90% of the time.

61. Time, location, and confidence factors can also be built into predictive models. However, it is often unnecessary to build an additional factor into a predictive model to get the desired results. For instance, the Grade B values already predict the existence of an acceptable television picture at least 90% of the time, so the model need only predict that a signal of Grade B intensity exists at least 50% of the time. Use of a higher time factor, such as 90%, would amount to unnecessary double-counting. The Longley-Rice model used for DTV allocations recognizes this and, therefore, incorporates the 50% time factor into its calculations. Both broadcasters and satellite carriers agree that this is also appropriate for purposes

of the SHVA. We therefore see no reason to change the number when adapting Longley-Rice to the individual location context.

62. Although the parties generally agree that the time factor should be 50%, they do not agree on the appropriate level for the confidence factor. Confidence, in this context, is a way of expressing how certain the model is that the predicted signal value is at least that high. Importantly, it is not a reflection of how accurate the model is. Longley-Rice has generally incorporated a 50% confidence factor in its calculations. ''Confidence'' does not mean, as the word might imply, that the model is more accurate. We believe that increasing the ''confidence'' factor above 50% decreases errors of one type and increases errors of another type. For example, if we use a confidence factor of 90%, the model will ''search'' for a predicted signal value at a particular location in which it has 90% confidence that the value would, in reality, be that value or higher. The model could predict a particular signal value, say 47 dBu, and be 85% confident that the signal would be 47 dBu or higher in reality. Such a high level of confidence means it would be very likely that the location would get a 47 dBu signal. However, because the model is searching for a value in which it has 90% confidence, it would not predict 47 dBu and would continue searching. Eventually, the model would find a signal value in which it has 90% confidence, say 45 dBu, and deliver that as the result. Taking the example one step further, consider a ''served'' household under the SHVA to be a household that receives a signal of at least 47 dBu (the appropriate value for channels 2–6). If the model predicts with 90% confidence that a signal of at least 45 dBu exists, the 45 dBu household would be classified as ''unserved,'' even though it is very likely (85% confidence) that it receives a signal of at least 47 dBu. We believe it would be inconsistent with the SHVA to classify a household as unserved when a model could predict it to be served with such a high degree of confidence. Therefore, a confidence variability factor of 90% is unsuitable for purposes of the SHVA because it overpredicts the number of truly unserved households.

63. A predictive model that includes truly served households in an unserved category, even temporarily, creates several undesired effects. First, consumers could be confused and frustrated. If the model overpredicts the number of unserved consumers, and those consumers subscribe to network service via satellite, they will face disappointment when the broadcaster forces termination of the broadcast network service. Conversely, if the model underpredicts the number of unserved consumers, they would be unjustly deprived of broadcast network service via satellite. Second, the SHVA protects network affiliates by making their served households off limits to satellite delivery of broadcast networks. A 90% confidence factor for served households would make many truly served households eligible for satellite-delivered network service, contrary to the intent of the SHVA. Third, if we endorse a model that underpredicts served households, broadcasters would have a great incentive to challenge the model's prediction by taking an actual measurement. Satellite carriers would pursue testing when models consistently underpredict unserved households. Either result would defeat the goal of endorsing a predictive methodology upon which all parties can rely.

64. We have chosen to incorporate a 50% confidence factor in the ILLR model because it neither overpredicts nor underpredicts served households. A 50% confidence factor does not create a statistical bias in favor of either satellite carriers or broadcasters. Rather, it provides a median result that does not predictably err in one direction or the other. We have sought to endorse a confidence factor that is fair to both sides. Importantly, broadcasters have accepted the 50% confidence factor in their pleadings and in their endorsement of the DTV Longley-Rice model in the Miami court case. Similarly, SBCA's engineering experts, Hatfield and Dawson, propose using a 50% confidence factor in the TIREM model that they endorse. They explain that when the confidence factor is 50%, the model predicts the median situation and ''the user has no control over this statistical variable.''

Individual Mode

65. The ILLR will operate in a so-called ''individual mode,'' reflecting an observer's point-of-view at a single location. In the ILLR, location variability becomes effectively irrelevant because only one location (e.g., a single household) is considered. The individual mode merges location variability (the measurable or observable differences between dissimilar locations) and so-called situational variability (the small, often hidden, differences between similar or identical locations) into the statistical confidence factor. One expert on the issues, George Hufford, states:

> In the *individual mode,* situation and location variability are combined so that there remain this combined variability and time variability. Here, the typical user would be the individual receiver of a broadcast station for whom reliability means the time availability, and confidence means the combined situation/location variability.

Compare the ''broadcast mode,'' in which the DTV Longley-Rice model operates, but which is inappropriate for the purposes of the SHVA. That mode reflects the broadcaster's point-of-view when it is determining a service area that includes many locations. The DTV allotment proceeding utilized the broadcast mode because it was predicting the service areas of the new DTV stations, not the status of individual households as served or unserved by analog (NTSC) signals.

Terrain Elevation

66. Because the model seeks to predict signal intensity at individual locations, the model we endorse considers terrain elevation every 1/10 of a kilometer. This distance is as precise as current technology allows. It contrasts with the DTV Longley-Rice model that considers terrain elevation every kilometer.

Antenna Height

67. The ILLR model approximates the height of the household whose signal is being predicted. Current models presume an antenna height of 30 feet. The model we endorse, when used for purposes of the SHVA, shall incorporate an antenna height of 20 feet for one story buildings and 30 feet for buildings taller than one story, including MDUs. This requirement is generally consistent with our conclusions about the height a tester must raise a testing antenna when making actual, on-site signal measurements. MDU residents may require specialized attention due to their unusual circumstances, which will vary from person to person and building to building.

Land Use and Land Cover

68. Satellite carriers and some other commenters argue that vegetation and buildings affect signal intensity. Some broadcasters agree that vegetation and buildings affect signal propagation, but assert that the Longley-Rice model, as well as the Grade B planning factors, already account for these effects.

69. We conclude that land use and land cover affect signal intensity at individual locations and shall be used in the ILLR when an appropriate application develops. The United States Geological Survey maintains a Global Land Information System (''GLIS'')

database on land use and land cover indicating features such as vegetation and man-made structures. (See <http://edcwww.cr.usgs.gov/Webglis/glisbin/glismain.pl>.) We believe that this information is both credible and useful. We acknowledge that larger buildings are usually found in urban areas and Congress expected that the SHVA would primarily benefit rural consumers, but the definition of ''unserved'' is not explicitly limited to those consumers. The statute does not impose a mileage limitation or distinguish between urban and rural households. While we expect the model to include land use and land cover, we are not aware of a standard means of including such information in the ILLR that has been accepted by the technical and scientific community. When an appropriate application has been developed and accepted, this information will be included in the ILLR. We challenge interested parties to develop such an application that more accurately reflects the signal intensity at an individual location.

Interference

70. The Longley-Rice model as used in the DTV Allotment proceeding is capable of predicting interference from nearby television stations. We believe that the model we endorse, ILLR, should include signal interference so that it will more accurately predict picture quality. We acknowledge that interference is not formally included in the measurement methodology we have established in this Order, primarily because of the difficulties that would be created if we required testers to attempt to measure for it. However, all sides have acknowledged that interference affects picture quality, and we believe that, in contrast to the measurement methodology, interference can be reliably included in the predictive model, and so it is included to provide more accurate results.

Error Codes

71. Some satellite carriers have argued strongly for alleviation of the problems presented by error codes (KWX=3) that the Longley-Rice model sometimes presents after analysis of signal intensity at particular locations. Error codes result when the model makes a prediction of signal intensity, but essentially rejects the prediction for a reason that may or may not be significant. We conclude that a party should either accept the prediction by ignoring the error code or test the result with an on-site measurement. If the result is accepted and is high enough to predict service, the household shall be classified as served. If the result is low enough to predict lack of service, the household shall be classified as unserved.

TIREM

72. Several satellite carriers have asked the Commission to endorse the TIREM predictive model instead of Longley-Rice. The TIREM methodology, jointly developed by the National Telecommunications and Information Agency (NTIA) and the Joint Spectrum Center of the Defense Department to test specific paths with complex geometry. We believe that TIREM shows promise as a tool for predicting signal intensity at individual locations, but we decline to endorse it at this time for several reasons. NTIA has confirmed the concerns raised by some commenters concerning the public availability of a standardized and useful version of TIREM. For example, the NTIA states that the latest version of TIREM may not be readily available outside of eligible government agencies due to federal export restrictions. These impediments to access and use would severely impede TIREM's usefulness to the industries and to consumers. Further, there is not enough information regarding which, if any, version would work best in the SHVA context. We are unaware of any empirical information demonstrating that publicly available applications of TIREM are substantively more accurate than the ILLR. Indeed, the NTIA has run tests comparing the publicly available version found on its Internet site with both the Commission's traditional Grade B contour projections and a version of Longley-Rice similar to ILLR. The NTIA created a chart of sample contours for 16 designated market areas and accompanying maps that suggest that, in many cases, TIREM Version 3 predicts a station service area larger than the Commission's traditional Grade B contour.

73. In contrast to TIREM, the Commission has many years of experience using and evaluating the Longley-Rice model. TIREM and Longley-Rice consider the same factors: ''frequency, atmospheric conditions, the electrical parameters of the earth, and the shape of the terrain between the two points.'' The difference between the models is the algorithm used to consider the factors. Neither model's source code accounts for vegetation or buildings, but both models could be run including this data, as ILLR will be. Further, we are increasing the accuracy of the Longley-Rice model for the purpose of predictions for individual locations by requiring that terrain elevations be examined every one-tenth kilometer. In light of the significance and weight conveyed by the Commission's endorsement of a particular model, we believe that the ILLR model will provide most, if not all, of the same benefits claimed for TIREM by its proponents while avoiding its current potential flaws.

Loser Pays

74. The SHVA contains a ''loser pays'' mechanism that allows a party to recover the cost of conducting a signal measurement at a subscriber's household. (17 U.S.C. 119(a)(9).) At the present time, the loser pays mechanism only applies when parties are in litigation. Under the current law, if a broadcast network station questions whether a subscriber is unserved, an actual measurement at the subscriber's household may be conducted by either the satellite carrier or broadcaster to determine eligibility. If a measurement shows that the household is unserved, the broadcaster must pay the cost of the test. Similarly, if the test shows that the household is served, the satellite carrier must assume the cost of the test. From 1994 to 1996, the SHVA had ''transitional rules'' that included a ''loser pays'' mechanism different from the one currently in effect. This ''loser pays'' mechanism was not confined to the context of civil litigation.

75. In light of the Miami and Raleigh court findings that satellite carriers have signed up millions of people who are served, it appears that the loser pays mechanisms have not been effective in discouraging the enrollment of ineligible subscribers. The record is unclear on the reason for this failure, but anecdotal evidence suggests that both satellite carriers and broadcasters are disinclined to conduct tests, even when they are likely to win, because the tests could annoy their customers and generate ill-will.

76. The loser pays mechanism is part of the SHVA, and the Commission has no authority to change this mechanism or to promulgate regulations that conflict with it. We believe that the Commission's endorsement of a more reliable predictive model in this Order will allow the existing loser pays mechanism in the SHVA to work more effectively in civil actions.

Future Options

77. The resolution of the issues surrounding delivery of broadcast network signals over satellite should not end with this Order. There are several, often competing, public policies involved in the future actions that we discuss below. The value of local broadcasting in this country has been recognized time and again by Congress

and the Commission. Local television stations play a vital role in delivering news, weather, and public affairs information to their local communities. The growing competition between DBS and cable, however, benefits consumers by giving them more choices to watch what they want and by creating new and higher-quality services. DTH satellite carriers have proven to be the most successful competitors to incumbent cable companies, but they still serve only 9 million households, which is only between 10% and 15% of the multichannel video programming market. One significant reason consumers give for not considering satellite programming service is the difficulty of getting seamless broadcast network service. Congress has informally asked for our opinion on options to improve the SHVA and Communications Act to better serve consumers. In response to these requests, we identify some possible changes Congress could consider. This list is not meant to be exhaustive.

Local-into-Local

78. Congress could consider changes to copyright law to allow satellite companies to provide local television stations to local markets. Cable companies already do this, to their distinct advantage vis a vis the satellite carriers. Broadcasters support local-into-local legislation because they do not fear losing their audiences—and the advertising dollars that follow. Some satellite carriers accept local-into-local legislation because it gives them a limited right to provide their subscribers with services those subscribers want. Local-into-local satisfies consumers' demands for broadcast network service via satellite without harming localism. Local-into-local also makes satellite carriers more attractive to consumers, thus increasing their competitive standing with cable companies. However, local-into-local cannot provide the solution for every community in the immediate future, due to limitations in the satellites' capacity to carry every local channel. EchoStar recently predicted that with new spectrum, and without full must-carry requirements, it will only be able to serve 20 major cities within the next three years. Those cities cover about half the United States' population. Smaller cities would not be able to receive service, even under the best scenario, for about 5 years. Viewers who live in communities where local-into-local service is unavailable will need other solutions, including DirecTV's practice of selling over-the-air antennas with their satellite dishes. However, for those that can receive local network stations via satellite, local-into-local provides a partial solution that should address the needs of consumers and the broadcast and satellite industries, as well as promote competition to cable.

Change from the Grade B Signal Intensity Standard

79. We have noted that the Grade B signal intensity standard was originally designed to depict a television station's service area, and that it may not address all the factors that determine the quality of a consumer's television picture. This is especially true if one assumes that consumers have higher expectations for their television picture than they did in the 1950s and that environmental changes increase the effects of the factors that Grade B cannot easily address, such as ghosting and signal interference. Although we believe that the Grade B standard is still useful for determining signal strength and signal intensity, there may be a better, but still objective, standard that could be developed for identifying unserved households. The SHVA, however, prevents the Commission from exploring an alternative standard because it explicitly requires the use of Grade B to measure signal intensity and determine whether a household is unserved. This undertaking would demand considerable time and significant government and industry resources.

90-Day Waiting Period

80. Before receiving satellite-delivered broadcast networks, the SHVA requires an unserved consumer who subscribes to cable to terminate that service and wait for 90 days. Once the cable service ends, the consumer then would face 90 days with no acceptable network service—nothing over cable, unattainable over-the-air, and not yet available via satellite. This requirement discourages a potential satellite consumer from terminating his or her cable service. We believe that elimination of the waiting period should be considered.

Predictive Model and Loser Pays Mechanism

81. The ''loser pays'' mechanism in the SHVA holds promise for helping to resolve or avoid the disputes that arise under the law, but it currently applies only when the parties are engaged in civil litigation over the eligibility of subscribing households to receive broadcast network programming via satellite. We believe the loser pays mechanism would be more effective if it also applied before litigation commences and if used in conjunction with a predictive model. Initially, we suggest that clear statutory acceptance of prediction models for creating rebuttable presumptions of service or lack of service would add certainty to the entire SHVA process. The ILLR prediction model that we endorse in this Order will reduce mistakes when predicting a household's status as served or unserved and will therefore allow parties to be more confident in the predicted result and less inclined to conduct or demand a test. A broadly applied loser pays mechanism that allocates the cost of testing on the party in error, in conjunction with this more reliable prediction model, would likely give satellite carriers an economic incentive to avoid enrolling consumers who are predicted to be served, and to discourage broadcasters from challenging subscribers who are predicted as unserved. Less testing means less burden and inconvenience for the industries and consumers. Fewer challenges and disputes would reduce the number of consumers who are angered and inconvenienced by the operation of the SHVA.

Procedural Matters

82. To minimize possible confusion in connection with the injunction scheduled to take effect on February 28, 1999, which will affect more than 700,000 satellite subscribers, this Report and Order will become effective upon publication in the **Federal Register**. We find good cause exists under the Administrative Procedure Act (''APA'') to have the rule adopted in this Report and Order take effect upon publication in the **Federal Register** pursuant to section 553(d)(1) and (3) of the APA. (See also 47 CFR 1.427(b).) We believe that making the Report and Order and rule effective upon publication in the **Federal Register** will eliminate any confusion should the court in CBS et al. v. PrimeTime 24 wish to issue a supplemental order in light of the conclusions in this Order.

Final Regulatory Flexibility Analysis

83. As required by the Regulatory Flexibility Act (''RFA'') an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated into the Notice of Proposed Rulemaking (''NPRM'') in this proceeding. The Commission sought written public comment on the possible impact of the proposed policies and rules on small entities in the NPRM, including comments on the IRFA. This Final Regulatory Flexibility Analysis (''FRFA'') in this Report and Order (''Order'') conforms to the RFA.

Need for and Objective of the Rules

84. In this Order, the Commission responds to Petitions for Rulemaking filed by the National Rural Telecommunications Cooperative and EchoStar Communications Corporation requesting that the Commission address the methods for determining whether a household is ''unserved'' by network television stations for purposes of the 1988 Satellite Home Viewer Act (17 U.S.C. 119). Legal Basis

85. This Order is authorized under Sections 1, 4(i), 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), and 154(j) and Section 119(d)(10)(a) of the Copyright Act, 17 U.S.C. 119(d)(10)(a).

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

86. Small Cable Business Association (SCBA) filed comments regarding the possible impact of this proceeding on small cable operators. SCBA contends that since small cable and satellite carriers draw from the same customer base, any Commission action broadening the ''unserved'' household definition could adversely affect small cable operators. SCBA contends that its members represent an important link in the distribution of local programming, especially in rural areas, and should not be overlooked in this proceeding. SCBA does not object to satellite delivery of broadcast network signals, so long as satellite providers are required to provide carriage of all broadcast signals within a single community. National Association of Broadcasters (NAB), and others, maintain that any expansion of unserved viewers could have a substantial impact on television broadcast stations serving smaller markets. The ability of these stations to purchase programming and to serve their viewers would be impacted by lower advertising revenues should the Commission's actions dramatically expand the numbers of unserved households in their market place. National Rural Telecommunications Cooperative urges the Commission to revisit the conclusion in its IRFA that because small businesses do not have the financial resources necessary to become DBS licensees, none will be affected by the proposed action.

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

87. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed action. The RFA 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 (5 U.S.C. 604(a)(3). 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 SBA (15 U.S.C. 632). The action taken in this Order will affect television broadcasting licensees and DTH satellite operators.

88. Television Stations. The rules in this Order will apply to television broadcasting licensees, and potential licensees of television service. The SBA defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and that produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number. There were 1,509 television broadcasting stations operating in the nation in 1992. That number has remained fairly constant as indicated by the approximately 1,579 operating full power television broadcasting stations in the nation as of May 31, 1998. In addition, as of October 31, 1997, there were 1,880 low power television broadcasting (''LPTV'') broadcasting stations that may also be affected by our proposed rule changes. For 1992 the number of television broadcasting stations that produced less than $10.0 million in revenue was 1,155 establishments.

89. DBS and other DTH satellite operators. The Commission has not developed a definition of small entities applicable to geostationary or non-geostationary orbit fixed-satellite or DBS service applicants or licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified. This definition provides that a small entity is one with $11.0 million or less in annual receipts. The number of employees working for a ''small entity'' must be 750 or fewer. According to Census Bureau data, there are 848 firms that fall under the category of Communications Services, Not Elsewhere Classified that could potentially fall into the DTH category. Of those, approximately 775 reported annual receipts of $11 million or less and qualify as small entities. The proposed action in this Order applies to entities providing DTH service, including licensees of DBS services and distributors of satellite programming. There are four licensees of DBS services under Part 100 of the Commission's rules. Three of those licensees are currently operational, and each of those licensees has annual revenues in excess of the threshold for a small business.

Description of Projected Reporting, Record-keeping, and Other Compliance Requirements

90. The rules adopted today impose no requirement to file any information with the Federal Communications Commission. Parties who choose to conduct individual household measurements are required to reduce to memorialize their test observations and results.

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

91. We believe that the rules we adopt today will have minimal impact on small television stations' ability to serve the public. The rule we adopt today has no impact on the number of viewers who are ''unserved'' or unable to receive the relevant television broadcast stations' signals, thus mitigating any economic impact in the market place. The rule will primarily affect DTH satellite operators, carriers and distributors, as well as full power commercial stations that are affiliates of national networks. The latter businesses generally do not fall into the category of small entities. Any adverse effect on the satellite industry is primarily the result of SHVA itself, and the actions we take represent our efforts to maximize competition including competition by small businesses consistent with faithfully interpreting the Act.

Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule Changes

92. None.

Ordering Clauses

93. It is ordered, pursuant to Sections 1, 4(i), 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), and 154(j); and Section 119(d)(10)(a) of the Copyright Act, 17 U.S.C. 119(d)(10)(a), the terms and rule

of this Report and Order are adopted. The amendments to 47 CFR 73.686 shall become effective upon date of publication of this Report and Order in the **Federal Register**.

94. *It is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 et seq. (1981).

List of Subjects in 47 CFR Part 73

Antenna, Measurement, Satellite, Signal, Television.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

Rule Changes

Part 73 of Title 47 of the Code of Federal Regulations is amended to read as follows:

PART 73—[AMENDED]

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

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

2. Section 73.686 is amended by adding paragraph (d) to read as follows:

§ 73.686 Field strength measurements.

* * * * *

(d) Collection of field strength data to determine television signal intensity at an indvidual location—cluster measurements.

(1) *Preparation for measurements.*

(i) *Testing antenna.* The test antenna shall be a standard half-wave dipole tuned to the visual carrier frequency of channel being measured.

(ii) *Testing locations.* At the location, choose a minimum of five locations as close as possible to the specific site where the site's receiving antenna is located. If there is no receiving antenna at the site, choose the minimum of five locations as close as possible to a reasonable and likely spot for the antenna. The locations shall be at least three meters apart, enough so that the testing is practical. If possible, the first testing point should be chosen as the center point of a square whose corners are the four other locations. Calculate the median of the five measurements (in units of dBu) and report it as the measurement result.

(iv) *Multiple signals.* If more than one signal is being measured (i.e., signals from different transmitters), use the same locations to measure each signal.

(2) *Measurement procedure.* Measurements shall be made in accordance with good engineering practice and in accordance with this section of the Rules. At each measuring location, the following procedure shall be employed:

(i) *Testing equipment.* Measure the field strength of the visual carrier with a calibrated instrument with a bandwidth of at least 450 kHz, but no greater than one megahertz. Perform an on-site calibration of the instrument in accordance with the manufacturer's specifications. The instrument must accurately indicate the peak amplitude of the synchronizing signal. Take all measurements with a horizontally polarized dipole antenna. Use a shielded transmission line between the testing antenna and the field strength meter. Match the antenna impedance to the transmission line, and, if using an unbalanced line, employ a suitable balun. Take account of the transmission line loss for each frequency being measured.

(ii) *Weather.* Do not take measurements in inclement weather or when major weather fronts are moving through the measurement area.

(iii) *Antenna elevation.* When field strength is being measured for a one-story building, elevate the testing antenna to 6.1 meters (20 feet) above the ground. In situations where the field strength is being measured for a building taller than one-story, elevate the testing antenna 9.1 meters (30 feet) above the ground.

(iv) *Antenna orientation.* Orient the testing antenna in the direction which maximizes the value of field strength for the signal being measured. If more than one station's signal is being measured, orient the testing antenna separately for each station.

(3) Written Record shall be made and shall include at least the following:

(i) A list of calibrated equipment used in the field strength survey, which for each instrument, specifies the manufacturer, type, serial number and rated accuracy, and the date of the most recent calibration by the manufacturer or by a laboratory. Include complete details of any instrument not of standard manufacture.

(ii) A detailed description of the calibration of the measuring equipment, including field strength meters, measuring antenna, and connecting cable.

(iii) For each spot at the measuring site, all factors which may affect the recorded field, such as topography, height and types of vegetation, buildings, obstacles, weather, and other local features.

(iv) A description of where the cluster measurements were made.

(v) Time and date of the measurements and signature of the person making the measurements.

(vi) For each channel being measured, a list of the measured value of field strength (in units of dBu and after adjustment for line loss and antenna factor) of the five readings made during the cluster measurement process, with the median value highlighted.

[FR Doc. 99–3464 Filed 2–11–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 24

[FHWA Docket No. FHWA–98–3379]

RIN 2125–AE34

Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This final rule implements several amendments to the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act), 42 U.S.C. 4601–4655, that were made by Public Law 105–117, enacted on November 21, 1997. Those amendments provide that an alien not lawfully present in the United States shall not be eligible to receive relocation payments or any other assistance provided under the Uniform Act unless such ineligibility would result in exceptional and extremely unusual hardship to the alien's spouse, parent, or child and such spouse, parent, or child is a citizen or an alien admitted for permanent residence. A notice of proposed rulemaking (NPRM) concerning these amendments was published for comment on June 12, 1998.

EFFECTIVE DATE: This rule is effective March 15, 1999.

FOR FURTHER INFORMATION CONTACT: Marshall Schy, Office of Real Estate Services, HRE–10, (202) 366–2035; or Reid Alsop, Office of the Chief Counsel, HCC–31, (202) 366–1371, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:45 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): http://dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded by using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Federal Register's home page at: http://www.nara.gov/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/nara.

Background

This regulation implements the amendments to the Uniform Act enacted on November 21, 1997, concerning the ineligibility of an alien not lawfully present in the United States for relocation payments and assistance under the Uniform Act. Background relating to the passage of these amendments and the FHWA's role as lead agency for the Uniform Act is discussed in some detail in the preamble to the NPRM published in the **Federal Register** on June 12, 1998 (63 FR 32175), and is not repeated here.

The Uniform Act is one of the Federal government's ''cross-cutting'' requirements, providing protections and benefits to persons whose real property is acquired or who are forced to move by Federal or federally-assisted programs or projects. Seventeen other Federal departments and agencies (including one, the Pennsylvania Avenue Development Corporation, which now is defunct) have adopted by reference the DOT governmentwide regulation implementing the Uniform Act found at 49 CFR 24. Title II of the Uniform Act deals with relocation assistance. The major purposes of Title II are to assure the fair and equitable treatment of persons displaced by Federal or federally-assisted programs or projects, and to ensure that such displaced persons ''shall not suffer disproportionate injuries as the result of programs and projects designed for the benefit of the public as a whole, and to minimize the hardship of displacement on such persons.'' Title II accomplishes this by providing for relocation advisory assistance and relocation payments to eligible displaced persons. Public Law 105–117 provides that aliens not lawfully present in the United States are not eligible to receive these benefits, except as discussed below.

In response to the NPRM, we received a total of 36 comments from eight separate commenters—four State highway agencies, three local agencies and one Federal agency. We thoroughly considered all these comments and made a number of changes to our original proposal before issuing the final rule.

This final rule seeks to implement Public Law 105–117 in a manner that minimizes the administrative and procedural burden on the thousands of persons displaced each year by Federal and federally-assisted programs or projects, as well as on the many Federal, State, and local agencies and private persons who implement the Uniform Act.

Discussion of Comments

In the NPRM, we noted but did not propose the option of establishing more detailed requirements mandating such things as the documentation to be provided by each person to be displaced, the review procedures to be followed and the findings to be made by affected Federal, State, or local agencies. Several comments recommended that we require, or at least provide examples of, appropriate documentation or procedures in the final rule. Still other comments raised concerns about the administrative burden and potential discrimination consequences of requiring documentation and requested sample certification language. As we noted in the NPRM, one of our fundamental principles in developing this rule has been to avoid imposing significant administrative burdens in implementing the 1997 amendments to the Uniform Act. This is why the rule itself does not have specific documentation requirements, but allows the displacing agency to determine the need for documentation.

On the other hand, we have made it an equal, if not higher, priority that any such documentation requirements must be implemented in a nondiscriminatory manner. The final rule continues to allow displacing agencies to prescribe additional nondiscriminatory requirements concerning the certification. We continue to believe that the approach set forth in the final rule is adequate to prevent payment of relocation benefits in cases such as the one that gave rise to Public Law 105–117 (in which a person was considered by the displacing agency to be an illegal alien) without imposing substantial administrative burdens and costs on displaced persons or displacing agencies.

The rule requires that persons seeking relocation payments or assistance under the Uniform Act certify, as a condition of eligibility, that they are citizens or are otherwise lawfully present in the United States. The preamble to the NPRM indicated that displacing agencies could meet the certification requirement simply by making it part of a person's claim for relocation benefits (described in 49 CFR 24.207) and we have carried forward this approach in the final rule. We believe that requiring displacing agencies to obtain some type of certification from all persons who are to be displaced as the result of a Federal or federally-assisted program or project is necessary in order to comply with Public Law 105–117 and, at the same time, to avoid discrimination. It is our view that this rule provides a framework for so doing with a minimum of burden on displacing agencies and the affected public.

One commenter suggested that the issue of eligibility and residency status should be raised earlier in the relocation process to prevent surprises at a later, less correctable stage. We agree that the displacing agency should provide relevant information to potential displaced persons early in the relocation process, as part of the general [relocation] information notice (described in 49 CFR 24.203(a)), and we have inserted a new paragraph at 24.203(a)(4) to accomplish this purpose.

Other commenters asked what form the certification may take, what documentation should be required in support of it, what the nature of a displacing agency's review process should be, what findings an agency must make, what might constitute ''reason to believe'' a certification may be invalid, whether certain circumstances would require documentation for a certification, and who may sign it.

In keeping with our objective of minimizing prescriptive Federal requirements, we have not provided a particular form for the certification. As noted in the NPRM, we believe it would be acceptable for an agency to incorporate the certification into its existing claim forms (for example, by adding a group of boxes to be checked), if the agency determines that this approach is appropriate to its process. In regard to documentation standards, the nature of a displacing agency's review process, and the question of required findings we believe these are matters best left to the displacing agency to determine, except that all processes and criteria related to this rule must be nondiscriminatory.

Similarly, the determination of what constitutes ''reason to believe'' a certification may be invalid should be based on the judgment of the displacing agency, relying on the agency staff's contacts with the displaced person, their knowledge of the affected geographic area, contacts with neighbors and neighborhood institutions, and various other factors specific to each situation.

One commenter also raised the question of whether there are certain circumstances which would trigger a request for documentation. The commenter who raised this issue did not provide any examples of such circumstances and we have been unable to identify any. In particular, we question whether a policy which determined that a particular situation(s) always required documentation could be implemented in a truly nondiscriminatory manner. We continue to think that each case must be handled on an individual basis.

One commenter questioned who may sign the certification in the case of a family that is to be displaced. We believe that a head of household may sign the certification, just as a head of household may sign the claim form for a relocation payment, and have so provided in new section 24.208(a)(2). However, unlike an individual's certification, a head of household's certification also would certify as to the status of other family members. Agencies should design their certification materials to be sure they ask for a response appropriate to the displaced person's situation.

A parallel concern arises in dealing with nonresidential displacees. Several commenters asked if the prohibition on benefits in Public Law 105–117 applies to businesses. It seems clear that it does since the term ''person'' used in Public Law 105–117 is defined broadly in the Uniform Act so as to include businesses (as well as farms and nonprofit organizations). We believe the Congress intended to prevent the receipt of Uniform Act benefits by any alien not legally present in the U.S. and not meeting the exception requirements discussed below. We also believe that the prohibition on benefits must be applied differently to the differing ''ownership'' situations found in, for example, a sole proprietorship, a partnership, or a corporation. As in the case of residential displacees, we think the answer lies in looking at the nature of the entity to be displaced. Since a sole proprietorship involves only one person, the eligibility of the business is synonymous with the residency status of its proprietor. At the other end of the spectrum, it is our view that a corporation, as a legal person established pursuant to State law, need only certify that it is authorized to conduct business in the United States.

For partnerships or other associations that have more than one owner but which are not incorporated, we believe that the certification must be designed to elicit a response reflective of the status of all of the owners. Second, if any of the owners are not eligible, no relocation payments may be made to such persons. Last, any payments for which the business would otherwise be eligible should be reduced by a percentage based on the prorated shares of the ownership between eligible and ineligible owners. We have adopted a similar approach to mixed eligibility in residential situations and have added clarifying language in § 24.208(c) of the final rule.

Under this rule, a displacing agency may deny eligibility only if: (1) A person fails to provide the required certification; or (2) the agency determines that a person's certification is invalid, based on a fair and nondiscriminatory review of an alien's documentation or other information that the agency considers reliable and appropriate; and (3) the agency concludes that denial would not result in ''exceptional and extremely unusual hardship.'' [See following paragraph.]. Any person who is denied eligibility may utilize the existing appeals procedure, described in 49 CFR 24.10.

As we proposed in the NPRM, this rule requires that if the displacing agency, based on its review or on other credible evidence, believes that a displaced person's certification is invalid, it shall obtain further information before making a final determination to deny eligibility. If the displacing agency believes that a certification that an alien is lawfully present in the United States is invalid, it must obtain verification from the local office of the Immigration and Naturalization Service (INS) before making the determination final. [A **Federal Register** citation to a list of local INS offices is included in the final rule. However, if an agency is unable to obtain the address or telephone number of its local INS office, it may contact the FHWA in Washington, DC (Marshall Schy, Office of Real Estate Services, or Reid Alsop, Office of Chief Counsel) at 202–366–2035 or 202–366–1371, respectively.].

If the displacing agency believes that a certification that a person is a citizen of the United States is invalid, it must request further evidence of citizenship and verify such evidence, as appropriate.

One commenter asked if a failure to certify should result in a denial of Uniform Act benefits, without INS verification. If the displacing agency is satisfied that the failure to certify constitutes a refusal or inability to certify and is not merely an oversight, misunderstanding, or other mistake, it may deny benefits without INS verification.

Another commenter asked if the INS verification involved the SAVE (Systematic Alien Verification for Entitlements) system. The INS would determine the appropriate method of verification, which could include the use of the SAVE system.

Another commenter recommended that only the INS or the FHWA verify residency status. Only the INS has the authority to verify the status of aliens. We believe that the approach we proposed in the NPRM and have carried over to the final rule, where verification is provided by the INS when requested by the displacing agency, is the most efficient and effective way to meet the intent of the amendments while minimizing disruption to ongoing relocation programs. We anticipate that such verification should prove necessary in only a very limited number of cases.

As noted, Public Law 105–117 provides that relocation eligibility could be allowed, even if a person is not lawfully present in the United States, if the agency concludes that denial would result in ''exceptional and extremely unusual hardship'' to such person's spouse, parent, or child who is a citizen or is lawfully admitted for permanent residence in the United States.

The rule includes a definition of the phrase ''exceptional and extremely unusual hardship'' which focuses on significant and demonstrable impacts on health, safety, or family cohesion. Several commenters requested that we define this term more precisely, or provide further discussion concerning its application. We have retained the NPRM's definition in the final rule. This phrase is intended to allow judgment on the part of the displacing agency and does not lend itself to an absolute standard applicable in all situations. Commenters had several questions relating to this hardship exception, including to whom does it extend, what documentation is required to support a claim of hardship, what is a spouse, and a request for a definition of the term ''clear and convincing evidence [of hardship],'' as well as a recommendation that income level be a

factor in the consideration of ''hardship.''

We believe the amendments contemplate a standard of hardship involving more than the loss of relocation payments and/or assistance alone which, after all, is the basic result of the amendments. Thus, we do not agree that income alone (for example, measured as a percentage of income spent on housing, as suggested by one commenter) would make the denial of benefits a ''hardship'' exemption. [We recognize that identical hardship language is used in general immigration law, as one of the criteria for halting the removal of certain aliens (8 U.S.C. 1229b(b)(1)(D)). However, it appears that to date the INS has not provided guidance or standards for implementing this provision.].

We believe the amendments and the rule clearly indicate to whom the ''hardship exemption'' extends. When considering whether such an exemption is appropriate, a displacing agency may examine only the impact on an alien's spouse, parent, or child who is a citizen or lawful resident alien. In determining who is a spouse, we expect displacing agencies to use the definition of that term under State or other applicable law. In keeping with the principle of allowing displacing agencies maximum reasonable discretion, we believe the question of what documentation is required to support a claim of hardship is one best left to the displacing agency, as long as it is handled in a nondiscriminatory manner. The same principle applies to the term ''clear and convincing evidence [of hardship]'' found in the amendments.

Another commenter requested that we define the term ''citizen or national'' which we proposed as one of the residency statuses to which an applicant for Uniform Act benefits could certify. The word ''national'' was included in the NPRM to avoid excluding persons from certain U.S. possessions (American Samoa, for example) whose status is U.S. national, rather than U.S. citizen. To clarify this matter in the final rule, we have substituted the word ''citizen'' for the phrase ''citizen or national'' and have added a definition of ''citizen'' that includes nationals.

In the NPRM, we requested comments as to whether additional information or guidance should be included in the final rule concerning situations in which some, but not all, occupants of a dwelling are not lawfully present in the United States. Several commenters spoke to this issue requesting guidance or clarification. We believe that only eligible occupants should be considered in selecting comparable dwellings and computing replacement housing payments, and have so provided in new section 24.208(c). Thus, if several household members were not legally present in the U.S., a household which otherwise would require a comparable replacement dwelling with four bedrooms instead might be entitled to one with three bedrooms, with the replacement housing payment computed using the price/rent of the three bedroom comparable.

As noted in the preamble to the NPRM, most States have their own relocation statutes which enable State agencies to comply with the Uniform Act on programs or projects that receive Federal financial assistance. Those States should consider whether any changes to State law or regulations are necessary to comply with Public Law 105–117.

One commenter requested that we provide standards for the potential loss of Federal funding which might occur as a result of failure to comply with the requirements of Public Law 105–117 on projects receiving Federal financial assistance. As noted in the NPRM, while we do not believe that Public Law 105–117 preempts the provisions of State relocation statutes, it is our position that, on federally-assisted programs or projects, Federal funds could no longer participate in the costs of any relocation payments or assistance that are not consistent with the provisions of Public Law 105–117 and this rule.

Finally, this rule makes two technical changes to 49 CFR 24.2 unrelated to Public Law 105–117. First, it eliminates the paragraph designations in the alphabetized list of definitions contained therein, to reflect current drafting policies of the Office of the Federal Register. Second, it modifies the definition of ''State'' to delete the outdated reference to the Trust Territories of the Pacific Islands.

Cross References

Title 49, part 24, of the Code of Federal Regulations (CFR) constitutes the governmentwide regulation implementing the Uniform Act. The regulations and directives of many other Federal departments and agencies contain a cross reference to this part in their regulations, and the change in this rulemaking is directly applicable to the relocation assistance activities of these departments and agencies. The changes also apply to other agencies within DOT that are covered by the Uniform Act. The parts of the CFR which contain a cross reference to this part, are listed below:

Department of Agriculture, 7 CFR part 21
Department of Commerce, 15 CFR part 11
Department of Defense, 32 CFR part 259
Department of Education, 34 CFR part 15
Department of Energy, 10 CFR part 1039
Environmental Protection Agency, 40 CFR part 4
Federal Emergency Management Agency, 44 CFR part 25
General Services Administration, 41CFR part 105–51
Department of Health and Human Services, 45 CFR part 15
Department of Housing and Urban Development, 24 CFR part 42
Department of the Interior, 41 CFR part 114–50
Department of Justice, 41 CFR part 128–18
Department of Labor, 29 CFR part 12
National Aeronautics and Space Administration, 14 CFR part 1208
Tennessee Valley Authority, 18 CFR part 1306
Veterans Administration, 38 CFR part 25

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866, nor is it a significant regulatory action within the Department of Transportation's regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required. The FHWA does not consider this action to be a significant regulatory action because the amendments would merely update existing regulations so that they are consistent with Public Law 105–117. By this rulemaking, the agency merely implements several amendments to the Uniform Act to ensure that aliens not lawfully present in the United States are ineligible for relocation benefits or assistance. In an effort to protect other occupants of a dwelling, however, this rule allows the displacing agency to grant relocation eligibility if the agency concludes that denial would result in ''exceptional and extremely unusual hardship'' to such person's spouse, parent, or child who is a citizen or is lawfully admitted for permanent residence in the United States. Neither the individual nor cumulative impact of this action are significant because this rule does not alter the funding levels available in Federal or federally assisted programs covered by the Uniform Act. The rule merely prevents payment of

relocation benefits in cases where the displacing agency determines a person to be in this country unlawfully.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the agency has evaluated the effects of this rule on small entities and hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. This action merely updates and clarifies existing procedures used by displacing agencies so as to prevent the payment of relocation benefits to aliens who are in this country unlawfully, in accordance with Public Law 105–117.

Environmental Impacts

The FHWA has also analyzed this action for the purpose of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and has determined that this action does not have any effect on the quality of the human environment.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. Pub. L. 105–117 discourages State and local governments from providing relocation benefits under the Uniform Act to persons who are not lawfully present in the United States (unless certain hardships would result) by denying the participation of Federal funds in any such benefits. The FHWA expects this to affect only a relatively small percentage of all persons covered by the Uniform Act. Further, this rule implements the requirements of Pub. L. 105–117 in a way that will keep administrative burdens to a minimum.

Unfunded Mandates Reform Act of 1995

This rule does not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. (2 U.S.C. 1532).

Paperwork Reduction Act

This rule contains new collection of information requirements for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. The new collection of information is mandated by section 1 of Public Law 105–117, 111 Stat. 2384, and this rule seeks to minimize such collection requirements.

This rule adds additional information collection requirements to the Office of Management and Budget (OMB) approved information collection budget for OMB control number 2105–0508. Displacing agencies will require each person who is to be displaced by a Federal or federally-assisted project, as a condition of eligibility for relocation payments or advisory assistance, to certify that he or she is lawfully present in the United States. This certification could normally be provided as a part of the existing relocation claim documentation used by displacing agencies.

The FHWA estimates that during 1997 there were approximately 6,500 persons displaced as a result of DOT programs or projects. Since the FHWA believes that each displaced person should know whether he/she is a citizen or is lawfully present in the United States, the FHWA estimates that the certification would take no more than 10 seconds per person.

Accordingly, the FHWA estimates the public recordkeeping burden [required as a result] of this collection of information to be 17 hours for each year of implementation.

The U.S. DOT has determined that the increase in the FHWA's public recordkeeping burden for this collection of information is minimal. Thus, the Department will submit to the OMB updated numbers for this increase in our collection of information budget under the current control number 2105–0508.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 24

Real property acquisition, Relocation assistance, Reporting and recordkeeping requirements, Transportation.

In accordance with the foregoing, the FHWA amends part 24 of title 49, Code of Federal Regulations, as set forth below.

PART 24—[AMENDED]

1. The authority citation for 49 CFR part 24 continues to read as follows:

Authority: 42 U.S.C. 4601 *et seq.*; 49 CFR 1.48(cc).

2. Section 24.2 is amended by removing the alphabetical paragraph designations from all definitions; by adding two new terms *Alien not lawfully present in the United States* and *Citizen;* by revising paragraph (1) introductory text of the definition of *Displaced person* and adding paragraph (2)(xii); by revising the definition of *State;* and by placing all definitions in alphabetical order to read as follows:

§ 24.2 Definitions.

* * * * *

Alien not lawfully present in the United States. The phrase ''alien not lawfully present in the United States'' means an alien who is not ''lawfully present'' in the United States as defined in 8 CFR 103.12 and includes:

(1) An alien present in the United States who has not been admitted or paroled into the United States pursuant to the Immigration and Nationality Act and whose stay in the United States has not been authorized by the United States Attorney General, and

(2) An alien who is present in the United States after the expiration of the period of stay authorized by the United States Attorney General or who otherwise violates the terms and conditions of admission, parole or authorization to stay in the United States.

* * * * *

Citizen. The term ''citizen,'' for purposes of this part, includes both citizens of the United States and noncitizen nationals.

* * * * *

Displaced person.

(1) *General.* The term ''displaced person'' means, except as provided in paragraph (2) of this definition, any person who moves from the real property or moves his or her personal property from the real property: (This includes a person who occupies the real property prior to its acquisition, but who does not meet the length of occupancy requirements of the Uniform Act as described at §§ 24.401(a) and 24.402(a)):

* * * * *

(2) * * *

(xii) A person who is not lawfully present in the United States and who has been determined to be ineligible for relocation benefits in accordance with § 24.208.

* * * * *

State. Any of the several States of the United States or the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the

United States, or a political subdivision of any of these jurisdictions.

* * * * *

3. In part 24, in the list below, for each section indicated in the left column, remove the word or words indicated in the middle column wherever they appear in the section, and add the word or words indicated in the right column:

Section	Remove	Add
24.102(k)	24.2(w)	24.2
24.103(c)	24.2(s)	24.2
24.105(c)	24.2(s)	24.2
24.202	24.2(g)	24.2
24.203(b)	24.2(k)	24.2
24.204(a)	24.2(d)	24.2
24.205(c)(2)(ii)(B)	24.2(d) and (f)	24.2
24.301 intro paragraph	24.2(g)	24.2
24.303(a)	24.2(g)	24.2
24.304 intro paragraph	24.2(t)	24.2
24.306(a)(6)	24.2(e)	24.2
24.306(c)	24.2(i)	24.2
24.307(a)	24.2(aa) and (bb)	24.2
24.401(c)(4)(ii)	24.2(f)	24.2
24.403(a)	24.2(d)	24.2
24.403(b)	24.2(f)	24.2
24.404(c)(2)	24.2(d)(2)	24.2
Appendix A under the heading of Section 24.2 Definitions:		
First Parag.	Section 24.2(d)(2)	Removed.
	§ 24.2(d)(2)	24.2
Fourth Para.	Section 24.2(d)(7)	Paragraph (7) in the definition of *comparable replacement dwelling.*
Seventh Para.	Section 24.2(g)(2)	Removed.
Seventh Para.	Section 24.2(g)(2)(iv)	Paragraph (2)(iv) under this definition.
Ninth Para.	Section 24.2(k)	Removed.
Appendix A under the heading of Section 24.404 Replacement Housing of Last Resort:		
First Para.	24.2(p)	24.2

4. Part 24 is amended by redesignating § 24.203(a)(4) as § 24.203(a)(5) and by adding a new § 24.203(a)(4) to read as follows:

§ 24.203 Relocation notices.

(a) * * *

(4) Informs the person that any person who is an alien not lawfully present in the United States is ineligible for relocation advisory services and relocation payments, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child, as defined in § 24.208(i).

* * * * *

5. Part 24 is amended by redesignating § 24.208 as § 24.209 and by adding a new § 24.208 to read as follows:

§ 24.208 Aliens not lawfully present in the United States.

(a) Each person seeking relocation payments or relocation advisory assistance shall, as a condition of eligibility, certify:

(1) In the case of an individual, that he or she is either a citizen or national of the United States, or an alien who is lawfully present in the United States.

(2) In the case of a family, that each family member is either a citizen or national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the head of the household on behalf of other family members.

(3) In the case of an unincorporated business, farm, or nonprofit organization, that each owner is either a citizen or national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the principal owner, manager, or operating officer on behalf of other persons with an ownership interest.

(4) In the case of an incorporated business, farm, or nonprofit organization, that the corporation is authorized to conduct business within the United States.

(b) The certification provided pursuant to paragraphs (a)(1), (a)(2), and (a)(3) of this section shall indicate whether such person is either a citizen or national of the United States, or an alien who is lawfully present in the United States. Requirements concerning the certification in addition to those contained in this rule shall be within the discretion of the Federal funding agency and, within those parameters, that of the displacing agency.

(c) In computing relocation payments under the Uniform Act, if any member(s) of a household or owner(s) of an unincorporated business, farm, or nonprofit organization is (are) determined to be ineligible because of a failure to be legally present in the United States, no relocation payments may be made to him or her. Any payment(s) for which such household, unincorporated business, farm, or nonprofit organization would otherwise be eligible shall be computed for the household, based on the number of eligible household members and for the unincorporated business, farm, or nonprofit organization, based on the ratio of ownership between eligible and ineligible owners.

(d) The displacing agency shall consider the certification provided pursuant to paragraph (a) of this section to be valid, unless the displacing agency determines in accordance with paragraph (f) of this section that it is invalid based on a review of an alien's documentation or other information that the agency considers reliable and appropriate.

(e) Any review by the displacing agency of the certifications provided pursuant to paragraph (a) of this section shall be conducted in a nondiscriminatory fashion. Each displacing agency will apply the same standard of review to all such certifications it receives, except that

such standard may be revised periodically.

(f) If, based on a review of an alien's documentation or other credible evidence, a displacing agency has reason to believe that a person's certification is invalid (for example a document reviewed does not on its face reasonably appear to be genuine), and that, as a result, such person may be an alien not lawfully present in the United States, it shall obtain the following information before making a final determination.

(1) If the agency has reason to believe that the certification of a person who has certified that he or she is an alien lawfully present in the United States is invalid, the displacing agency shall obtain verification of the alien's status from the local Immigration and Naturalization Service (INS) Office. A list of local INS offices was published in the **Federal Register** in November 17, 1997 at 62 FR 61350. Any request for INS verification shall include the alien's full name, date of birth and alien number, and a copy of the alien's documentation. [If an agency is unable to contact the INS, it may contact the FHWA in Washington, DC at 202–366–2035 (Marshall Schy, Office of Real Estate Services) or 202–366–1371 (Reid Alsop, Office of Chief Counsel), for a referral to the INS.]

(2) If the agency has reason to believe that the certification of a person who has certified that he or she is a citizen or national is invalid, the displacing agency shall request evidence of United States citizenship or nationality from such person and, if considered necessary, verify the accuracy of such evidence with the issuer.

(g) No relocation payments or relocation advisory assistance shall be provided to a person who has not provided the certification described in this section or who has been determined to be not lawfully present in the United States, unless such person can demonstrate to the displacing agency's satisfaction that the denial of relocation benefits will result in an exceptional and extremely unusual hardship to such person's spouse, parent, or child who is a citizen of the United States, or is an alien lawfully admitted for permanent residence in the United States.

(h) For purposes of paragraph (g) of this section, ''exceptional and extremely unusual hardship'' to such spouse, parent, or child of the person not lawfully present in the United States means that the denial of relocation payments and advisory assistance to such person will directly result in:

(1) A significant and demonstrable adverse impact on the health or safety of such spouse, parent, or child;

(2) A significant and demonstrable adverse impact on the continued existence of the family unit of which such spouse, parent, or child is a member; or

(3) Any other impact that the displacing agency determines will have a significant and demonstrable adverse impact on such spouse, parent, or child.

(i) The certification referred to in paragraph (a) of this section may be included as part of the claim for relocation payments described in § 24.207 of this part.

(Approved by the Office of Management and Budget under control number 2105–0508)

Issued on: February 3, 1999.

Gloria J. Jeff,

Deputy Administrator, Federal Highway Administration.

[FR Doc. 99–3205 Filed 2–11–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 268

[FRA Docket No. FRA–95–4545; Notice No. 2]

RIN 2130–AB29

Magnetic Levitation Transportation Technology Development Program

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Amendment to the interim final rule.

SUMMARY: FRA published an Interim Final Rule with request for comments on October 13, 1998 (63 FR 54600), implementing the Magnetic Levitation Technology Deployment Program. The Interim Final Rule established a deadline of December 31, 1998, for the submission of application packages for preconstruction planning assistance, and set out a schedule for other actions flowing from the submission of application packages. This Amendment to the Interim Final Rule extends the deadline for the submission of application packages to February 15, 1999, and makes other adjustments to various dates which flow from that extension of time.

EFFECTIVE DATE: This Amendment to the Interim Final Rule is effective February 12, 1999.

FOR FURTHER INFORMATION CONTACT: Neil E. Moyer, Chief—Program Development Division, FRA, 1120 Vermont Ave., NW, Washington, DC 20590 (telephone 202–493–6365; E-mail address: *Neil.Moyer@fra.dot.gov*), or Gareth Rosenau, Attorney, Office of Chief Counsel, FRA, 1120 Vermont Ave., NW, Mailstop 10, Washington, DC 20590 (telephone 202–493–6054; E-mail address: Gareth.Rosenau@fra.dot.gov).

SUPPLEMENTARY INFORMATION: Citing the extensive and comprehensive information required to be submitted, several potential applicants expressed an interest in an extension of the deadline for receipt of applications for maglev preconstruction planning grants. In response, on December 22, 1998, FRA extended the deadline from December 31, 1998, to February 15, 1999. All known potential applicants were contacted by telephone and were notified of the change. A memorandum advising all known interested parties of the change was also mailed at the same time.

Formal comments to the docket concerning the Interim Final Rule will be discussed upon publication of the Final Rule. None of the formal comments to the docket concerned the extension of the deadline for maglev preconstruction planning grants, or other dates, being modified by this Amendment No. 1.

Regulatory Analyses and Notices

This Amendment to the Interim Final Rule merely extends the deadline for application packages for preconstruction planning assistance from December 31, 1998, to February 15, 1999, and adds one month to all subsequent milestones listed in § 268.3. There are no other changes to the Interim Final Rule. Declarations with respect to various regulatory requirements were contained in the Interim Final Rule. By this Amendment, those declarations with respect to various regulatory requirements are incorporated herein by reference, and it is stated that there are no other modifications required to those declarations by virtue of the action taken in this Amendment.

List of subjects in 49 CFR Part 268

Grant programs-transportation, High speed ground transportation, Maglev, Magnetic levitation.

The Rule

In consideration of the foregoing, FRA amends part 268 title 49 of the Code of Federal Regulations as set forth below:

PART 268—[AMENDED]

1. The authority citation for part 268 continues to read as follows:

Authority: 49 U.S.C. 322, 23 U.S.C. 322; 49 CFR 1.49.

2. Section 268.3 is amended by revising paragraphs (b), (c), (d), (e), and (f) to read as follows:

§ 268.3 Different phases of the Maglev Deployment Program.

* * * * *

(b) Phase I—Competition for Planning Grants (Early October 1998–April 30, 1999).

(1) Description. In Phase I, States will apply for funds for preconstruction planning activities. As required by § 268.13, applications must be filed with FRA by February 15, 1999. FRA will select one or more projects to receive preconstruction planning financial assistance awarded under this part to perform Phase II of the Maglev Deployment Program.

(2) Timing of Major Milestones.

(i) February 15, 1999—Planning grant applications due.

(ii) March 31, 1999—FRA selects grantees for planning grants.

(iii) April 30, 1999—FRA awards planning grants for the conduct of activities listed in Phase II.

(c) Phase II—Project Description Development (May 1, 1999–April 30, 2000).

(1) Description. In Phase II, each grant recipients will prepare and submit to FRA a project description and supporting preconstruction planning reports and an EA. Supporting reports may include demand and revenue analyses, project specification, cost estimates, scheduling, financial studies, and other information in support of the project description. FRA will use this information in reaching a decision on which project to select for final engineering and construction financing. In addition, after completion of the EA, each grant recipient will initiate activities aimed at preparing a site-specific draft EIS. FRA will initiate documentation of environmental factors considered in the project selection process.

(2) Timing of Major Milestones.

(i) December 31, 1999—Deadline for submission of appropriate EA needed by FRA for the selection of one project under Phase III.

(ii) April 30, 2000—Deadline for submission of project descriptions and any related supporting reports needed by FRA for project selection.

(d) Phase III—Project Selection Process (May 1, 2000–August 31, 2000).

(1) Description. FRA will evaluate the information provided by the grant recipients under Phase II and will select one project for final design, engineering, and construction funding. Recipients of assistance will progress work on site-specific EISs.

(2) Timing of Major Milestones. August 31, 2000—FRA selects the project.

(e) Phase IV—Project Development and Completion of Site-specific EIS (September 1, 2000–August 31, 2001).

(1) Description. The financial assistance recipient selected in Phase III will undertake final design and engineering work for the selected project together with completing the site-specific final EIS. Detailed agreements for the construction and operation of the project would be negotiated. The other grant recipients may also elect to complete the site-specific draft EISs initiated during Phase II.

(2) Timing of Major Milestones. August 31, 2001—Final Record of Decision on site-specific EIS, confirming the project design.

(f) Phase V—Completion of Detailed Engineering & Construction (September 1, 2001 and beyond).

(1) Description. In Phase V, the sponsoring State or State designated authority would oversee the efforts of the public/private partnership formed to progress the selected project, to complete the detailed engineering designs, finance, construct, equip, and operate the project in revenue service. Construction would likely be contingent on the appropriation of federal funds.

(2) [Revised]

3. Section 268.13 is revised to read as follows:

§ 268.13 Deadline for submission of applications for preconstruction planning assistance.

Completed application packages shall be returned to FRA by February 15, 1999. Applications shall be submitted to: Honorable Jolene M. Molitoris, Administrator, Federal Railroad Administration, ATTN: Maglev Project, RDV–11, 1120 Vermont Ave., NW, Stop 20, Washington, DC 20590.

Issued in Washington, DC, on February 9, 1999.

Donald M. Itzkoff,

Deputy Federal Railroad Administrator.

[FR Doc. 99–3605 Filed 2–11–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 360

RIN 2125–AE24

Fees for Services Performed in Connection With Motor Carrier Registration and Insurance

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This document adopts filing fees and fee collection regulations for the motor carrier registration and insurance functions transferred to the FHWA as a result of the enactment of the ICC Termination Act of 1995 (ICCTA). The effect of this rule is to make these fees and regulations applicable to registration and insurance filings made with the FHWA.

DATES: This rule is effective March 15, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas T. Vining, Licensing and Insurance Division, Office of Motor Carrier Information Analysis, HIA–30, (202) 358–7028; or Mr. Michael Falk, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at: http://www.nara.gov/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/nara.

Background

The ICCTA (Pub. L. 104–88, 109 Stat. 803) which was enacted on December 29, 1995, abolished the Interstate Commerce Commission (ICC). The ICCTA transferred many of the ICC's motor carrier functions to the Secretary of Transportation. In particular, the former ICC's licensing and insurance functions, relating to operations by for-hire motor carriers, property brokers, and freight forwarders in interstate or foreign commerce, were transferred to the Secretary and are now performed by the FHWA, Office of Motor Carrier Information Analysis, Licensing and

Insurance Division. The ICC's remaining rail and motor carrier rate functions were transferred to the Surface Transportation Board (STB), a new entity, established within the DOT.

Section 204, the savings provision of ICCTA, provides that all regulations previously issued by the ICC continue in effect according to their terms until modified or terminated. All of the ICC regulations, including those related to filing fees, previously codified at 49 CFR Part 1002, were transferred to the STB in the final rule entitled ''Transfer of Regulations from the Interstate Commerce Commission to the Surface Transportation Board Pursuant to the ICC Termination Act of 1995,'' 61 FR 1842 (January 24, 1996). The STB issued a notice of proposed rulemaking that proposed to modify the filing fees related to functions retained by the STB and to eliminate all filing fees related to the motor carrier functions transferred to the FHWA. *See* ''Regulations Governing Fees For Services In Connection With Licensing and Related Services—1996 Update,'' 61 FR 15208 (April 5, 1996) (1996 Fee Update). The Board's final decision was issued in Regulations Governing Fees for Service, 1 S.T.B. 179 (1996) 61 FR 42190 (August 14, 1996). Consequently, the FHWA is issuing this final rule to preserve the filing fees and fee regulations pertaining to the FHWA's new motor carrier functions as part of the FHWA's regulations.

Revenues from these fees directly support the licensing and insurance functions transferred from the former ICC to the FHWA. For this reason, these fees may differ somewhat from fees for other similar services performed by the FHWA.

Section-By-Section Analysis

Record Search and Copying Fees

A new section codified at 49 CFR 360.1 will provide specific fees for record searches, and the review, copying, and certification of the FHWA's public records related to motor carriers. These fees cover charges for searching and copying records maintained in the FHWA microfilm, paper files, or computer databases.

The STB's regulations at 49 CFR 1002.1 from which these regulations are derived also contain provisions related to searches of records not considered public under the Freedom of Information Act (FOIA), 5 U.S.C. 552. Those provisions are not carried over in this new section, however, because FOIA requests for the FHWA records are covered by existing DOT regulations at 49 CFR Part 7.

Fee Processing Regulations and Schedule of Filing Fees

A new section at 49 CFR 360.3 will contain the general fee processing regulations and the schedule of filing fees related to the motor carrier registration and insurance functions that now are performed by the FHWA pursuant to the ICCTA. These general fee regulations will establish the following policies and procedures:

(1) How and when filing fees must be paid;

(2) The procedure for opening a billing account for insurance filings and the terms and conditions for such an account;

(3) The policy that fees are not refundable;

(4) The policy regarding fees for related or consolidated proceedings;

(5) The policy and procedure for a request for waiver or reduction of a filing fee; and

(6) The policy for checks returned to the FHWA by a bank or other financial institution.

The schedule of filing fees set forth in this new section contains the description of all fee items related to the motor carrier licensing and insurance functions that were transferred to the FHWA. The fee items in the schedule of filing fees set forth in § 360.3(f) cover such activities as motor carrier registration applications, name changes for motor carriers, property brokers, or freight forwarders, insurance filings, and self-insurance applications.[1] Some fee item references have been modified to more accurately describe the activity covered by the fee item and to remove or revise outdated regulatory and statutory citations. In addition, many fee items have been renumbered because of the elimination of various fee items and the desirability of grouping together similar fee items. These fee items were formerly found at 49 CFR 1002.2.

Fee Update Procedure and Cost Update Formula

New § 360.5 provides that fees may be updated as deemed necessary by the FHWA according to the cost update formula set forth in that section. These regulations also provide that notices of fee updates will be published in the **Federal Register** and will be effective 30 days after publication of the update notice. In addition, the regulations set forth the formula for rounding updated fees.

Fee Levels

The ICCTA included a provision codified at 49 U.S.C. 13908 which directs the Secretary to issue regulations to replace the former ICC registration and insurance programs, the DOT identification number system, and possibly the single State registration system under 49 U.S.C. 14504 with a single, on-line, Federal system. The new system will serve as a clearinghouse and depository for information on, and identification of, foreign and domestic motor carriers, brokers, and freight forwarders required to register with the DOT. An advance notice of proposed rulemaking which sought comments on the parameters of the new system was published in FHWA Docket No. MC–96–25, FHWA 97–2349, ''Motor Carrier Replacement/Information System,'' 61 FR 43816 (August 26, 1996). Thus, the registration and insurance fees adopted here will only apply during the transition period to the new system.

The ICC's last user fee update, which established the ICC's filing fees at the 1995 cost level, was effective on February 1, 1995. *See* ''Regulations Governing Fees for Services In Connection With Licensing and Related Services–1995 Update,'' 59 FR 67642 (December 30, 1994). The FHWA's schedule of fees will be updated to 1996 cost levels based on the costing formula in § 360.5. Because this is a transition period, complete FHWA budget data that would be necessary to develop various factors of the cost update formula are not available. Therefore, the FHWA will use the same update factor calculations that STB used in its 1996 Fee Update. In any future update proceedings, the FHWA budget data will be used to develop the cost update factors.

Accordingly, for this fee update, the direct labor cost data for all fees have been revised to reflect the combined 1996 governmentwide general salary and the 1996 locality salary increase of 2.54 percent that took effect in January 1996.[2] The Government Fringe Benefit

[1] On September 23, 1997, the FHWA published an advance notice of proposed rulemaking to examine, in part, the need for assessing additional fees for processing and monitoring activities associated with the self-insurance program. See FHWA Docket No. FHWA–97–2923, MC–97–11, ''Qualifications of Motor Carriers to Self-Insure Their Operations and Fees to Support The Approval and Compliance Process,'' 62 FR 49654. On September 29, 1997, the FHWA corrected the assigned FHWA docket number and address for submission of comments at 62 FR 50892. The final rule being announced here does not address the issues covered in that proceeding.

[2] The 1996 governmentwide general salary increase of 2.00 percent and the 1996 locality salary increase for the Washington, DC, area of 0.54 percent make up the combined 2.54 percent increase. The Washington, DC, locality salary increase is relied on because all employees involved in these fee activities are located in the Washington, DC, area.

Cost used in the cost update formula is 49.55 percent. Based on fiscal year 1995 actual budget data, the Office General and Administrative Expense Factor is 26.73 percent for 1996. The General and Administrative Expense Factor for 1996 is 11.36 percent. The Operations Overhead Factor, which is developed from fiscal year 1995 payroll data, is 13.97 percent for 1996. The 1996 fully distributed cost for each item developed from these factors is set forth in the appendix of this document. The appendix will not appear in the Code of Federal Regulations.

The fully distributed cost increased for all items. Due to the rounding procedures set forth in § 360.5(e), however, not all fees will change. The actual filing fees are set forth in § 360.3(f).

In this rulemaking proceeding the FHWA is adopting the ICC's fee regulations related to the recently transferred motor carrier functions without any substantive changes. Therefore, these regulations impose no new burdens on the public.

The fee update regulations in § 360.5 provide that updated fees are to be published in the **Federal Register** and are to be effective 30 days after publication. In previous update proceedings in which the former ICC only modified its filing fees on the basis of the cost update formula, the updated fee schedule was issued as a final rule without prior notice and comment. *See* ''Regulations Governing Fees for Services In Connection With Licensing and Related Services—1995 Update,'' 59 FR 67642 (December 30, 1994); Regulations Governing Fees for Services–1993 Update, 9 I.C.C.2d 855 (1993); Regulations Governing Fees for Services–1991 Update, 8 I.C.C. 2d 13 (1991); and Regulations Governing Fees for Services–1990 Update, 7 I.C.C. 2d 855 (1990). The FHWA will follow that precedent and establish its filing fees at the 1996 cost level without prior notice and comment because this fee update only involves the mechanical application of the cost update formula. For these reasons and because this rule imposes no significant burdens on the public, the FHWA finds good cause to make this regulation final without prior notice and opportunity for comments under the Administrative Procedure Act.

Rulemaking Analyses and Notices

The FHWA believes that prior notice and opportunity for comment are unnecessary under 5 U.S.C. 553(b)(3)(B). The FHWA is not exercising discretion in a way that could be meaningfully affected by public comments. In this rulemaking, the former ICC's filing fee regulations related to the motor carrier functions transferred to the FHWA are being recodified as FHWA regulations. Additionally, three fees items (for name changes, for self-insurance applications, and for reinstatement of revoked operating authority) are being increased as a result of the mechanical application of a cost formula originally adopted by the ICC after notice and comment. The public will also have sufficient advance notice of changes in the three fee items because these changes and the underlying regulations will be effective on 30 days notice as provided in the regulations adopted here in § 360.5.

Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action under Executive Order 12866, or significant within the meaning of Department of Transportation regulatory policies and procedures. This regulatory action is not likely to have an annual effect on the economy of $100 million or more. In addition, it is not expected to cause an adverse effect on any sector of the economy because this rule will simply move certain regulations from one part of the CFR to another and make incremental adjustments to three filing fees. It will not impose any significant burden on the public. No serious inconsistency or interference with another agency's actions or plans will result because this rulemaking is designed to facilitate the transfer of the former ICC's motor carrier functions and related programs to the FHWA. In light of this analysis, the FHWA finds that a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601-612), the agency has evaluated the effects of this rulemaking on small entities. The fee structure remains the same, and any fee increases are incremental. Moreover, with the exception of the unchanged $10 fee for insurance filings made by insurance companies, the fee items are not assessed against any individual on a regular basis. Accordingly, the FHWA certifies that the action contained in this document will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

The FHWA has determined that this rule does not impose any unfunded mandates on State, local, or tribal governments in the aggregate, or on the private sector, of $100 million or more in any one year, as required by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532).

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a federalism assessment. Thus, an analysis of the federalism issue raised by issuance of these filing fee regulations is not required for the purposes of this rulemaking.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulatory Identification Number

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Lists of Subjects in 49 CFR Part 360

Administrative practice and procedure, Fees, Insurance, and Motor carriers.

Issued on: February 4, 1999.

Kenneth R. Wykle,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulations, Chapter III, by adding Part 360 to read as follows:

PART 360—FEES FOR MOTOR CARRIER REGISTRATION AND INSURANCE

Sec.
360.1 Fees for records search, review, copying, certification, and related services.
360.3 Filing fees.
360.5 Updating user fees.

Authority: 31 U.S.C. 9701; 49 U.S.C. 13908(c) and 14504(c)(2); and 49 CFR 1.48.

§ 360.1 Fees for records search, review, copying, certification, and related services.

Certifications and copies of public records and documents on file with the Federal Highway Administration will be furnished on the following basis, pursuant to the Freedom of Information Act regulations at 49 CFR Part 7:

(a) Certificate of the Director, Office of Motor Carrier Information Analysis, as to the authenticity of documents, $9.00;

(b) Service involved in checking records to be certified to determine authenticity, including clerical work, etc., incidental thereto, at the rate of $16.00 per hour;

(c) Electrostatic copies of the public documents, at the rate of $.80 per letter size or legal size exposure. A minimum charge of $5.00 will be made for this service; and

(d) Search and copying services requiring ADP processing, as follows:

(1) A fee of $42.00 per hour for professional staff time will be charged when it is required to fulfill a request for ADP data.

(2) The fee for computer searches will be set at the current rate for computer service. Information on those charges can be obtained from the Chief, Licensing and Insurance Division.

(3) Printing shall be charged at the rate of $.10 per page of computer generated output with a minimum charge of $.25. A charge of $30 per reel of magnetic tape will be made if the tape is to be permanently retained by the requestor.

§ 360.3 Filing fees.

(a) *Manner of payment.* (1) Except for the insurance fees described in the next sentence, all filing fees will be payable at the time and place the application, petition, or other document is tendered for filing. The service fee for insurance, surety or self-insurer accepted certificate of insurance, surety bond or other instrument submitted in lieu of a broker surety bond must be charged to an insurance service account established by the Federal Highway Administration in accordance with paragraph (a)(2) of this section.

(2) *Billing account procedure.* A written request must be submitted to the Office of Motor Carrier Information Analysis, Licensing and Insurance Division, to establish an insurance service fee account.

(i) Each account will have a specific billing date within each month and a billing cycle. The billing date is the date that the bill is prepared and printed. The billing cycle is the period between the billing date in one month and the billing date in the next month. A bill for each account which has activity or an unpaid balance during the billing cycle will be sent on the billing date each month. Payment will be due 20 days from the billing date. Payments received before the next billing date are applied to the account. Interest will accrue in accordance with 4 CFR 102.13.

(ii) The Debt Collection Act of 1982, including disclosure to the consumer reporting agencies and the use of collection agencies, as set forth in 4 CFR 102.5 and 102.6 will be utilized to encourage payment where appropriate.

(iii) An account holder who files a petition in bankruptcy or who is the subject of a bankruptcy proceeding must provide the following information to the Office of Motor Carrier Information Analysis, Licensing and Insurance Division:

(A) The filing date of the bankruptcy petition;

(B) The court in which the bankruptcy petition was filed;

(C) The type of bankruptcy proceeding;

(D) The name, address, and telephone number of its representative in the bankruptcy proceeding; and

(E) The name, address, and telephone number of the bankruptcy trustee, if one has been appointed.

(3) Fees will be payable to the Federal Highway Administration by a check payable in United States currency drawn upon funds deposited in a United States or foreign bank or other financial institution, money order payable in United States' currency, or credit card (VISA or MASTERCARD).

(b) Any filing that is not accompanied by the appropriate filing fee is deficient except for filings that satisfy the deferred payment procedures in paragraph (a) of this section.

(c) *Fees not refundable.* Fees will be assessed for every filing in the type of proceeding listed in the schedule of fees contained in paragraph (f) of this section, subject to the exceptions contained in paragraphs (d) and (e) of this section. After the application, petition, or other document has been accepted for filing by the Federal Highway Administration, the filing fee will not be refunded, regardless of whether the application, petition, or other document is granted or approved, denied, rejected before docketing, dismissed, or withdrawn.

(d) *Related or consolidated proceedings.* (1) Separate fees need not be paid for related applications filed by the same applicant which would be the subject of one proceeding. (This does not mean requests for multiple types of operating authority filed on forms in the OP–1 series under the regulations at 49 CFR part 365. A separate filing fee is required for each type of authority sought in each transportation mode, e.g., common, contract, and broker authority for motor property carriers.)

(2) Separate fees will be assessed for the filing of temporary operating authority applications as provided in paragraph (f)(6) of this section, regardless of whether such applications are related to an application for corresponding permanent operating authority.

(3) The Federal Highway Administration may reject concurrently filed applications, petitions, or other documents asserted to be related and refund the filing fee if, in its judgment, they embrace two or more severable matters which should be the subject of separate proceedings.

(e) *Waiver or reduction of filing fees.* It is the general policy of the Federal Highway Administration not to waive or reduce filing fees except as described as follows:

(1) Filing fees are waived for an application or other proceeding which is filed by a Federal government agency, or a State or local government entity. For purposes of this section the phrases ''Federal government agency'' or ''government entity'' do not include a quasi-governmental corporation or government subsidized transportation company.

(2) In extraordinary situations the Federal Highway Administration will accept requests for waivers or fee reductions in accordance with the following procedure:

(i) *When to request.* At the time that a filing is submitted to the Federal Highway Administration the applicant may request a waiver or reduction of the fee prescribed in this part. Such request should be addressed to the Director, Office of Motor Carrier Information Analysis.

(ii) *Basis.* The applicant must show the waiver or reduction of the fee is in the best interest of the public, or that payment of the fee would impose an undue hardship upon the requestor.

(iii) *Federal Highway Administration action.* The Director, Office of Motor Carrier Information Analysis, will notify the applicant of the decision to grant or deny the request for waiver or reduction.

(f) Schedule of filing fees.

Type of Proceeding		Fee
Part I: Licensing:		
(1)	An application for motor carrier operating authority, a certificate of registration for certain foreign carriers, property broker authority, or freight forwarder authority.	$300
(2)	A petition to interpret or clarify an operating authority	3,000
(3)	A request seeking the modification of operating authority only to the extent of making a ministerial correction, when the original error was caused by applicant, a change in the name of the shipper or owner of a plant site, or the change of a highway name or number.	50
(4)	A petition to renew authority to transport explosives	250
(5)	An application for authority to deviate from authorized regular-route authority	150
(6)	An application for motor carrier temporary authority issued in an emergency situation.	100
(7)	Request for name change of a motor carrier, property broker, or freight forwarder	14
(8)—(49)	[Reserved]	
Part II: Insurance:		
(50)	(i) An application for original qualification as self-insurer for bodily injury and property damage insurance (BI&PD).	4,200
	(ii) An application for original qualification as self-insurer for cargo insurance	420
(51)	A service fee for insurer, surety, or self-insurer accepted certificate of insurance, surety bond, and other instrument submitted in lieu of a broker surety bond.	$10 per accepted certificate, surety bond or other instrument submitted in lieu of a broker surety bond.
(52)	A petition for reinstatement of revoked operating authority	80
(53)—(79)	[Reserved].	
Part III: Services:		
(80)	Request for service or pleading list for proceedings	13 per list
(81)	Faxed copies of operating authority to applicants or their representatives who did not receive a served copy.	5

(g) *Returned check policy.* (1) If a check submitted to the FHWA for a filing or service fee is dishonored by a bank or financial institution on which it is drawn, the FHWA will notify the person who submitted the check that:

(i) All work will be suspended on the filing or proceeding, until the check is made good;

(ii) A returned check charge of $6.00 and any bank charges incurred by the FHWA as a result of the dishonored check must be submitted with the filing fee which is outstanding; and

(iii) If payment is not made within the time specified by the FHWA, the proceeding will be dismissed or the filing may be rejected.

(2) If a person repeatedly submits dishonored checks to the FHWA for filing fees, the FHWA may notify the person that all future filing fees must be submitted in the form of a certified or cashier's check or a money order.

§ 360.5 Updating user fees.

(a) *Update.* Each fee established in this part may be updated in accordance with this section as deemed necessary by the FHWA.

(b) *Publication and effective dates.* Updated fees shall be published in the **Federal Register** and shall become effective 30 days after publication.

(c) *Payment of fees.* Any person submitting a filing for which a fee is established shall pay the fee in effect at the time of the filing.

(d) *Method of updating fees.* Each fee shall be updated by updating the cost components comprising the fee. Cost components shall be updated as follows:

(1) Direct labor costs shall be updated by multiplying base level direct labor costs by percentage changes in average wages and salaries of FHWA employees. Base level direct labor costs are direct labor costs determined by the cost study in *Regulations Governing Fees For Service,* 1 I.C.C. 2d 60 (1984), or subsequent cost studies. The base period for measuring changes shall be April 1984 or the year of the last cost study.

(2) Operations overhead shall be developed each year on the basis of current relationships existing on a weighted basis, for indirect labor applicable to the first supervisory work centers directly associated with user fee activity. Actual updating of operations overhead will be accomplished by applying the current percentage factor to updated direct labor, including current governmental overhead costs.

(3)(i) Office general and administrative costs shall be developed each year on the basis of current levels costs, i.e., dividing actual office general and administrative costs for the current fiscal year by total office costs for the office directly associated with user fee activity. Actual updating of office general and administrative costs will be accomplished by applying the current percentage factor to updated direct labor, including current governmental overhead and current operations overhead costs.

(ii) FHWA general and administrative costs shall be developed each year on the basis of current level costs; i.e., dividing actual FHWA general and administrative costs for the current fiscal year by total agency expenses for the current fiscal year. Actual updating of FHWA general and administrative costs will be accomplished by applying the current percentage factor to updated direct labor, including current governmental overhead, operations overhead and office general and administrative costs.

(4) Publication costs shall be adjusted on the basis of known changes in the costs applicable to publication of material in the **Federal Register** or FHWA–OMC Register.

(This rounding procedures excludes copying, printing and search fees.)

(e) *Rounding of updated fees.* Updated fees shall be rounded in the following manner:

(1) Fees between $1 and $30 will be rounded to the nearest $1;

(2) Fees between $30 and $100 will be rounded to the nearest $10;

(3) Fees between $100 and $999 will be rounded to the nearest $50; and

(4) Fees above $1,000 will be rounded to the nearest $100.

APPENDIX

[Based on 1996 pay increase and overhead changes]

FEE#	1995 Direct Labor (1)	1996 Direct Labor Updated (2)	Check Process (3)	Govt. Fringes (4)	Total (2+3+4) (5)	Operations Overhead (6)	Office G&A (7)	FHA G&A (8)	Publication Cost (9)	Total Sub (5–9) (10)
1.	135.07	138.50	1.43	69.34	209.27	29.23	63.75	34.34	5.00	341.59
2.	64.77	66.42	1.43	33.62	101.46	14.17	30.91	16.65	5.00	168.19
3.	1,162.04	1,191.56	1.43	591.12	1,784.11	249.24	543.51	292.73	190.32	3,059.92
4.	22.74	23.32	1.43	12.26	37.01	5.17	11.27	6.07	0.00	59.53
5.	104.68	107.34	1.43	53.89	162.66	22.72	49.55	26.69	0.00	261.63
6.	145.13	148.82	1.43	74.45	224.69	31.39	68.45	36.87	5.00	366.40
7.	73.86	75.74	1.43	38.24	115.40	16.12	35.16	18.93	5.00	190.61
8.	56.40	57.83	1.43	29.36	88.63	12.38	27.00	14.54	5.00	147.55
9.	5.00	5.13	0.72	2.90	8.74	1.22	2.66	1.43	0.00	14.06
10.	12.88	13.21	1.43	7.25	21.89	3.06	6.67	3.59	0.00	35.21
11.	129..38	132.67	1.43	66.44	200.54	28.02	61.09	32.90	3.00	325.55
12.	185.20	189.90	1.43	94.81	286.14	39.97	87.17	46.95	0.00	460.23
40	3,020.52	3,097.24	1.43	1,535.39	4,634.06	647.38	1,411.73	760.34	0.00	7,453.51
41	1,453.28	1,490.19	1.43	739.10	2,230.72	311.63	679.57	366.01	0.00	3,587.94
50i	1,722.81	1,766.57	1.43	876.04	2,644.04	369.37	805.49	433.83	0.00	4,252.73
50ii	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	425.27
51	1.03	1.06	0.72	0.88	2.66	0.37	0.81	0.44	0.00	4.27
52	31.45	32.25	1.43	16.69	50.37	7.04	15.34	8.26	0.00	81.01
70	336.79	345.34	1.69	171.96	518.99	72.50	158.11	85.15	0.00	834.75
80	4.85	4.97	0.72	2.82	8.51	1.19	2.59	1.40	0.00	13.69
81i	41.95	43.02	1.43	22.02	66.47	9.29	20.25	10.91	0.00	106.91
81ii	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	25.00
82	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	5.00
*101 ..	3.17	3.25	0.72	1.97	5.94	0.83	1.81	0.97	0.00	9.55
*102 ..	16,55	16.97	0.00	8.41	25.38	3.55	7.73	4.16	0.00	40.82
*103 ..	0.55	0.56	0.00	0.28	0.84	0.12	0.26	0.14	0.00	1.36
*104 ..	41.63	42.69	0.00	21.15	63.84	8.92	19.45	10.47	0.00	102.68

*101—Certification of Director, Office of Motor Carrier Application Information Analysis (Fee Set a Rounded Fully Distributed Cost Level—Column (10) Above)—The 1996 Fee Is Set at $9.00.

*102—Service Involved on Checking Records To be Certified To Determine Authenticity, Including Clerical Work etc. Incidental Thereto (Fee Set at Rounded Direct Labor Only Level—Column (2) Above)—The 1996 Fee Is Set at $16.00 Per Hour.

*103—Electrostatic Copies of Public Documents, at a Specific Per Page Rate With a Minimum Charge of $5.00 Per Request (Per Page Rate Based on the Rounded Total in Column (5) Above)—The 1996 Fee Is Set at $.80 Per Page.

*104—A Fee for Professional Staff Time Will Be Charged When It Is Required To Fulfill a Request For ADP Data (Fee Set at Rounded Direct Labor Only Level—Column (2) Above)—The 1996 Fee Is Set at $42.00 Per Hour.

Note: This appendix will not appear in the Code of Federal Regulations.

[FR Doc. 99–3510 Filed 2–11–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–98–5033]

RIN No. 2127–AG07

Federal Motor Vehicle Safety Standards; Occupant Protection In Interior Impact

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Final rule; technical amendment.

SUMMARY: In April 1997, we issued a final rule amending its requirements for protecting vehicle occupants from impacts with upper vehicle interiors in crashes. One of the amendments in that final rule changed previously established procedures for relocating specific target points that are used to test compliance with the upper interior impact requirements. The procedure for relocating targets was modified by providing that targets could be relocated within a 25 millimeter (mm) radius sphere centered on the original target point. Prior to the modification, relocation was permitted within a 25 mm radius circle. However, the agency erroneously retained a provision specifying that the radius was to be measured along the surface of the vehicle interior. This technical conforming amendment eliminates that provision.

DATES: *Effective Date:* The amendment made by this final rule is effective March 15, 1999.

Petitions: Petitions for reconsideration must be received by March 29, 1999.

ADDRESSES: Petitions for reconsideration should refer to the docket number of this rule and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590:

For non-legal issues: Dr. William Fan, Office of Crashworthiness Standards,

NPS–11, telephone (202) 366–4922, facsimile (202) 366–4329, electronic mail ''bfan@nhtsa.dot.gov''

For legal issues: Otto Matheke, Office of the Chief Counsel, NCC–20, telephone (202) 366–5253, facsimile (202) 366–3820, electronic mail ''omatheke@nhtsa.dot.gov''.

SUPPLEMENTARY INFORMATION:

On April 8, 1997, we published a final rule (62 FR 16718) amending the upper interior impact protection requirements in Standard No. 201 ''Occupant Protection in Interior Impact'' in response to several petitions for reconsideration. Under Standard 201, target points are located in the upper interior of a vehicle and then struck with a test device known as the Free Motion Headform (FMH).

One of the amendments modified the procedure for relocating target points within a vehicle. Some target points need to be relocated because they are not, as initially located under the Standard, suitable for testing. For example, some points may be located on attachments to the vehicle interior, while others may be situated in areas where it is impossible for the specified impact area of the FMH, known as the forehead impact zone, to contact the target point. S10(b) of the Standard specifies a procedure for relocating such target points to facilitate contact between the forehead impact zone and a target point. Prior to the April 1997 final rule, the relocation procedure provided that any target point meeting the criteria justifying relocation could be relocated within a 25 mm radius circle measured along the contour of the vehicle interior from the center of the original target point. Since relocating target points may require movement in several dimensions, the April 1997 final rule changed the relocation procedure so that target points could be relocated within a 25 mm radius sphere. However, the amendment retained the language indicating that the 25 mm radius would be determined by measuring that distance along the vehicle interior.

The Association of International Automobile Manufacturers (AIAM) wrote NHTSA on November 7, 1997 requesting clarification on a number of issues relating to compliance with the upper interior impact requirements of Standard 201. Among these issues was a reported conflict between the use of a sphere to determine the boundaries of the space within which target points could be relocated and the retention of the language specifying that the radius of this sphere was to be measured along contour of the vehicle interior. AIAM suggested that this language was inappropriate and should be deleted.

We agree with AIAM. AIAM is correct in stating that measuring along a vehicle interior is inconsistent with our decision to substitute a sphere for a circle. The agency is issuing this technical amendment to delete the language providing for measuring the 25 mm along the contour of the vehicle interior.

This technical conforming amendment was not reviewed under E.O. 12866. This amendment does not have any costs or other impacts. NHTSA has considered costs and other factors associated with this amendment, and determined that the amendment does not change any of the conclusions in the April 1997 final rule regarding the impacts of that final rule, including the impacts on small businesses, manufacturers and other entities.

List of Subjects in 49 CFR Part 571

Motor vehicle safety.

In consideration of the foregoing, NHTSA amends 49 CFR part 571.201 as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.201 is amended by revising S10(b) to read as follows:

§ 571.201 Standard No. 201, occupant protection in interior impact.

* * * * *

S10—Target locations.

* * * * *

(b) Except as specified in S10(c), in instances in which there is no combination of horizontal and vertical angles specified in S8.13.4 at which the forehead impact zone of the free motion headform can contact one of the targets located using the procedures in S10.1 through S10.13, the center of that target is moved to any location that is within a sphere with a radius of 25 mm, centered on the center of the original target, and that can be contacted by the forehead impact zone at one or more combination of angles.

* * * * *

Issued: January 26, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–2938 Filed 2–11–99; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 64, No. 29
Friday, February 12, 1999

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 71

[Airspace Docket No. 99–AGL–4]

Proposed modification of Class E airspace; Cahokia, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Cahokia, IL. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 30L has been developed for St. Louis Downtown-Parks Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to increase the radius of the existing controlled airspace for this airport.

DATES: Comments must be received on or before March 29, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–4, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–AGL–4.'' The postcared will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Cahokia, IL, to accommodate aircraft executing the proposed GPS Rwy 30L SIAP at St. Louis Downtown-Parks Airport by modifying the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this proposed regulation—(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 proposed 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).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 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 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

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

* * * * *

AGL IL E5 Cahokia IL [Revised]

Cahokia, St. Louis Downtown—Parks Airport, IL
(Lat. 38° 34′ 15″N., long. 90° 09′ 22″W.)

That airspace extending upward from 700 feet above the surface within an 6.7-mile radius of the St. Louis Downtown—Parks Airport.

* * * * *

Issued in Des Plaines, Illinois, on January 25, 1999.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 99–3361 Filed 2–11–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–5]

Proposed modification of Class E airspace; Hallock, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Hallock, MN. A Global Positioning system (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 31 has been developed for Hallock Municipal Airport. Controlled airspace extending upward from 700 to 1,200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to increase the radius of the existing controlled airspace for this airport.

DATES: Comments must be received on or before March 29, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–5, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace docket No. 99–AGL–5.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Hallock, MN, to accommodate aircraft executing the proposed GPS Rwy 31 SIAP at Hallock Municipal Airport by modifying the existing controlled airspace. Controlled airspace extending upward from 700 to 1,200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 at FAA Order 7400.9E dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1 The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(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 proposed 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).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 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 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

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

* * * * *

AGL MN E5 Hallock NM [Revised]

Hallock Municipal Airport, MN
(Lat. 48°45′10″N., long. 96°56′35″W.)

That airspace extending upward from 700 feet above the surface within an 6.4-mile radius of the Hallock Municipal Airport and within 4.0 miles each side of the 136° bearing from the airport, extending from the 6.4-mile radius of 9.8 miles southeast of the airport.

* * * * *

Issued in Des Plaines, Illinois, on January 25, 1999.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 99–3360 Filed 2–11–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–75]

Proposed modification of Class E Airspace; Fremont, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Fremont, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 06, and a GPS SIAP to Rwy 24, have been developed for Sandusky County Regional Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action proposes to modify existing controlled airspace for Fremont, OH, by expanding the airspace to the southeast to accommodate the instrument flight procedures at the Sandusky County Regional Airport. This is an unrelated airspace action to the airspace action in docket number 98–AGL–56, Modification of Class E Airspace, Fremont, OH, (64 FR 4782, February 1, 1999) and incorporates the changes specified in that document.

DATES: Comments must be received on or before March 31, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–75, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plianes, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AGL–75.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Fremont, OH, to accommodate aircraft executing the proposed GPS Rwy 06 SIAP, and GPS Rwy 24 SIAP, at Sandusky County Regional Airport by modifying existing controlled airspace to the southeast to include this airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approaches. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(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 proposed 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).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 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 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

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

* * * * *

AGL OH E5 Freement, OH [Revised]

Fremont Airport, OH
(Lat. 41°20′03″ N., long. 83°09′36″ W.)
Sandusky County Regional Airport, OH
(Lat. 41°17′45″ N., long. 83°02′14″ W.)
Memorial Hospital of Sandusky County, OH
Point in Space Coordinates
(Lat. 41°20′18″ N., long. 83°08′57″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Fremont Airport, and within a 6.5-mile radius of the Sandusky County Regional Airport, and within a 6.0-mile radius of the Point in Space serving Memorial Hospital of Sandusky County.

* * * * *

Issued in Des Plaines, Illinois, on February 3, 1999.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 99–3517 Filed 2–11–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1300 and 1310

[DEA Number 137E2]

RIN 1117–AA321

Exemption of Chemical Mixtures

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The DEA is extending the comment period on the Federal Register notice of proposed rulemaking entitled ''Exemption of Chemical Mixtures'' published on September 16, 1998 (63 FR 49506). A previous publication in the **Federal Register** on November 12, 1998 (63 FR 63253) extended the original closing date for receipt of comments from November 16, 1999 to February 15, 1999. The DEA believes that an additional extension is necessary to ensure that all interested persons are granted ample time to resolve issues pertaining to these proposed regulations.

DATES: The period for public comment that was to close on February 15, 1999 is extended to April 16, 1999.

ADDRESSES: Comments and objections should be submitted in quintuplicate to the Deputy Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: The DEA published a notice of proposed rulemaking (63 FR 49506) to implement those portions of the Domestic Chemical Division Control Act of 1993 [Pub. L. 103–200] that exempt from regulation under the Controlled Substances Act certain chemical mixtures that contain regulated chemicals. The proposed regulations identified those mixtures, or categories of mixtures, that will be automatically exempt from regulation and defined an application process that can be used to exempt chemical mixtures that do not meet the criteria for automatic exemption. The DEA issued a ninety day extension to the period for public comment based on a formal request by Hyman, Phelps & McNamara, P.C. The DEA believes that an additional sixty day extension is now necessary. This additional extension is deemed necessary to assure that interested persons are afforded reasonable time to address issues of concern and allow all persons to respond accordingly. Therefore, the comment period for the proposed rule is extended to April 16, 1999. Comments must be received by the DEA on or before this date.

Dated: February 8, 1999.

Donnie R. Marshall,

Deputy Administrator, Drug Enforcement Administration.

[FR Doc. 99–3442 Filed 2–11–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 57, 72 and 75

RIN 1219–AA74; 1219–AB11

Diesel Particulate Matter Exposure of Underground Coal and Metal and Nonmetal Miners

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rules; extension of comment periods; availability of studies; notice of hearings; close of record.

SUMMARY: The Mine Safety and Health Administration (MSHA) is announcing the extension of the public comment periods on its proposed rules addressing diesel particulate matter exposure of underground coal miners as published in the **Federal Register** on April 9, 1998, and for underground metal and nonmetal miners published on October 29, 1998.

This document also announces the availability of three additional studies applicable to both rulemakings addressing diesel particulate matter exposure of underground coal and underground metal and nonmetal miners. These studies supplement the evidence in both rulemaking records regarding the risks to underground miners of serious health hazards

associated with exposure to high concentrations of diesel particulate matter. The Agency, therefore, intends to include these studies in both rulemaking records and make them available to interested parties upon request. These studies do not change the Agency's proposed findings.

The Agency is also announcing that it will hold public hearings on its proposed rule addressing diesel particulate matter exposure in underground metal and nonmetal mines in the following locations: Salt Lake City, Utah; Albuquerque, New Mexico; St. Louis, Missouri; and Knoxville, Tennessee.

DATES: Written comments on the three studies and on both proposed rules must be submitted on or before April 30, 1999.

The hearing dates, times and specific locations will be announced by a separate notice in the **Federal Register**. The rulemaking record for the metal and nonmetal proposed rule will remain open 60 days after the last public hearing.

ADDRESSES: Copies of the three studies are available to interested members of the public and may be obtained from the Office of Standards, Regulations and Variances, 703–235–1910.

Comments on the proposed rules may be transmitted by electronic mail, fax, or mail. Comments by electronic mail must be clearly identified as such and sent to this E-mail address: comments@msha.gov. Comments by fax must be clearly identified as such and sent to: MSHA, Office of Standards, Regulations, and Variances, 703–235–5551. Send mail comments to: MSHA, Office of Standards, Regulations, and Variances, Room 631, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Interested persons are encouraged to supplement written comments with computer files or disks; please contact the Agency with any questions about format.

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, Acting Director; Office of Standards, Regulations, and Variances; MSHA; 703–235–1910.

SUPPLEMENTARY INFORMATION: On April 9, 1998 (63 FR 17492) and October 29, 1998 (63 FR 58104), MSHA published proposed rules to reduce the risks to underground coal and metal and nonmetal miners, respectively, of serious health hazards that are associated with exposure to high concentrations of diesel particulate matter (dpm). DPM is a very small particle in diesel exhaust. Underground miners are exposed to far higher concentrations of this fine particulate than any other group of workers.

A. Cumulative Evidence

In its proposals, MSHA stated that the best available evidence indicates that such high exposures put these miners at excess risk of a variety of adverse health effects, including lung cancer. There is clear evidence that exposure to high concentrations of dpm can result in a variety of serious health effects. These health effects include: (1) Sensory irritations and respiratory symptoms serious enough to distract or disable miners; (2) death from cardiovascular, cardiopulmonary, or respiratory causes; and (3) lung cancer.

The Agency has reviewed cumulative evidence to support its findings that underground miners are at risk from exposure to dpm. MSHA intends to supplement the rulemaking records with the following studies:

(1) Christie, D.G., et al., ''Mortality in the New South Wales Coal Industry, 1973–1992,'' Medical Journal of Australia, 163(1):19–21, July 3, 1995.

(2) Johnston, A.M., et al., ''Investigation of the Possible Association Between Exposure to Diesel Exhaust Particulates in British Coal Mines and Lung Cancer,'' Institute of Occupational Medicine (IOM), Report TM/97/08, (Edinburgh, Scotland), November 1997.

(3) Steenland, Kyle, et al., ''Diesel Exhaust and Lung Cancer in the Trucking Industry: Exposure-Response Analyses and Risk Assessment,'' American Journal of Industrial Medicine, 34:220–228, 1998.

These studies are available and may be obtained by contacting the Office of Standards, Regulations and Variances, 703–235–1910.

B. Diesel Particulate Matter Exposure of Underground Coal Miners

The post-hearing comment period for the proposed rule addressing diesel particulate matter exposure of underground coal miners was scheduled to close on February 16, 1999 (63 FR 55811). However, in response to requests from the public to extend the post-hearing comment period, and in order to give the public an opportunity to comment on the three studies, the record for the coal proposed rule will remain open until April 30, 1999. This provides a total of 12 months from date of publication for the public to comment on the proposed rule.

C. Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners

The comment period for the proposed rule addressing diesel particulate matter exposure of underground metal and nonmetal miners was scheduled to close on February 26, 1999 (63 FR 58104). The Agency has received several requests from the public for additional time to prepare their comments on the proposed rule. Since the Agency also intends to supplement the rulemaking record with three new studies, the public comment period will be extended until April 30, 1999.

MSHA believes that extension of the comment periods for both rulemakings will provide sufficient time for all interested parties to review the studies and the proposed rules, and submit comments. All interested members of the mining community are encouraged to submit comments prior to April 30, 1999.

D. Public Hearings

MSHA plans to hold public hearings on the proposed rule addressing diesel particulate matter exposure of underground metal and nonmetal miners. The hearings will be held in Salt Lake City, Utah; Albuquerque, New Mexico; St. Louis, Missouri; and Knoxville, Tennessee. The hearing dates, times, and specific locations will be announced by a separate document in the **Federal Register**. The hearings will be held under Section 101 of the Federal Mine Safety and Health Act of 1977.

Dated: February 9, 1999.

Marvin W. Nichols, Jr.,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 99–3474 Filed 2–11–99; 8:45 am]

BILLING CODE 4510–43–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SPATS No. TX–045–FOR]

Texas Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of an amendment to the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Texas proposes revisions to regulations concerning air pollution control plans; reclamation plans: general requirements; air resources protection; stabilization of surface areas; and coal

processing plants: performance standards. Texas intends to revise its program to be consistent with the corresponding Federal regulations.

This document gives the times and locations that the Texas program and the amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that will be followed for the public hearing, if one is requested.

DATES: We will accept written comments until 4:00 p.m., c.s.t., March 15, 1999. If requested, we will hold a public hearing on the amendment on March 9, 1999. We will accept requests to speak at the hearing until 4:00 p.m., c.s.t. on March 1, 1999.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Michael C. Wolfrom, Director, Tulsa Field Office, at the address listed below.

You may review copies of the Texas program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430.

Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, P. O. Box 12967, Austin, Texas 78711–2967, Telephone: (512) 463–6900.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581–6430.
Internet:mwolfrom@mcrgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. You can find background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the February 27, 1980, **Federal Register** (45 FR 12998). You can find later actions concerning the Texas program at 30 CFR 943.10, 943.15, and 943.16.

II. Description of the Proposed Amendment

By letter dated January 28, 1999 (Administrative Record No. TX–647), Texas sent us an amendment to its program under SMCRA. The amendment includes changes made at Texas' own initiative. Texas proposes to amend the Texas Coal Mining Regulations. Below is a summary of the changes proposed by Texas. The full text of the program amendment is available for your inspection at the locations listed above under **ADDRESSES.**

The amendment revises the following topics and sections of the Texas Coal Mining Regulations:

1. *Section 12.143 Air Pollution Control Plan (Surface Mining).*

Texas proposes to update reference citations for applicable performance standards in paragraphs (a)(2), (b)(1) and (b)(2).

2. *Section 12.145 and Section 12.187 Reclamation Plan: General Requirements (Surface Mining and Underground Mining, respectively).*

Texas proposes to update and change one of the reference citation titles in paragraph (b)(3) of both sections from ''Regrading or Stabilizing Rills and Gullies'' to ''Stabilization of Surface Areas.''

3. *Section 12.199 Air Pollution Control Plan (Underground Mining).*

Texas proposes to update the reference citation for applicable performance standards in paragraph (2). The updated reference citation is Section 12.554 Stabilization of Surface Areas.

4. *Section 12.379 and Section 12.546 Air Resources Protection (Surface Mining and Underground Mining, respectively).*

Texas proposes to delete these two sections from its regulations.

5. *Section 12.389 and Section 12.554 Regrading or Stabilizing Rills and Gullies (Surface Mining and Underground Mining, respectively).*

Texas proposes to change the name of these two sections from ''Regrading or Stabilizing Rills and Gullies'' to ''Stabilization of Surface Areas.'' Texas also proposes to delete the existing language in these sections and replace it with the following language:

(a) All exposed surface areas shall be protected and stabilized to effectively control erosion and air pollution attendant to erosion.

(b) Rills and gullies, which form in areas that have been regraded and topsoiled and which either:

(1) Disrupt the approved postmining land use or the reestablishment of the vegetative cover; or

(2) Cause or contribute to a violation of water-quality standards for receiving streams; shall be filled, regraded or otherwise stabilized; topsoil shall be replaced; and the areas shall be reseeded or replanted.

6. *Section 12.651 Coal Processing Plants: Performance Standards (Surface Mining).*

Texas proposes to delete the existing language in paragraph (9) and replace it with the following language:

(9) Erosion and air pollution attendant to erosion shall be controlled in accordance with § 12.389 of this title (relating to Stabilization of Surface Areas);

Texas also proposes to update and change one of the reference citation titles from ''Regrading or Stabilizing Rills and Gullies'' to ''Stabilization of Surface Areas.''

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are requesting comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Texas program.

Written Comments

Your written comments should be specific and pertain only to the issues proposed in this rulemaking. You should explain the reason for any recommended change. In the final rulemaking, we will not necessarily consider or include in the Administrative Record any comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.s.t. on March 1, 1999. We will arrange the location and time of the hearing with those persons requesting the hearing. If you are disabled and need special accommodation to attend a public hearing, contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. We will not hold the hearing if no one requests an opportunity to speak at the public hearing.

You should file a written statement at the time you request the hearing. This will allow us to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after

those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, we may hold a public meeting, rather than a public hearing. If you wish to meet with us to discuss the amendment, request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will also make a written summary of each meeting part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each program is drafted and published by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 4, 1999.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 99–3435 Filed 2–11–99; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–98–175]

RIN 2121–AA97

Safety Zone: New York Super Boat Race, Hudson River, New York

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent safety zone that will be enacted annually for the New York Super Boat Race. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in the lower Hudson River, New York.

DATES: Comments must be received on or before April 13, 1999.

ADDRESSES: Comments may be mailed to the Waterways Oversight Branch (CGD01–98–175), Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, New York 10305, or deliver them to room 205 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 205, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–98–175) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the waterways Oversight Branch at the address under Addresses. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Super Boat International Productions sponsors this annual high-speed power

boat race with approximately 40 powerboats, 24 to 50 feet in length, racing on an 8-mile oval course at speeds in excess of 100 mph. An average of 100 spectator craft view this event each year. The safety zone encompasses all waters of the Lower Hudson River south of a line drawn from the northwest corner of Pier 76 in Manhattan to a point in Weehawken, New Jersey at approximate position 40°45′52″N 074°01′01″W (NAD 1983) and north of a line connecting the following points (all coordinates are NAD 1983):

Latitude	*Longitude*
40°42′16.0″N	074°01′09.0″W, then south to
40°41′55.0″N	074°01′16.0″W, then southwest to
40°41′47.0″N	074°01′36.0″W, then northwest to
40°41′55.0″N	074°01′59.0″W, then to shore at
40°42′20.5″N	074°02′06.0″W.

The safety zone area encompasses approximately four nautical miles of the Lower Hudson River from Pier 76, Manhattan to approximately 650 yards northwest of the Governors Island Light (LLNR 35010) in approximate position 40°42′20.5″N, 074°01′11″W (NAD 1983).

The proposed regulation is effective annually from 11:30 a.m. until 4:00 p.m. on the Sunday following Labor Day. The race boats will be competing at high speeds with numerous spectator crafts in the area, creating an extra or unusual hazard in the navigable waterway. The proposed regulation prohibits all vessels not participating in the event, swimmers, and personal watercraft from transiting this portion of the Lower Hudson River during the race. It is needed to protect the waterway users from the hazards associated with high-speed powerboats racing in confined waters.

Discussion of Proposed Rule

The proposed safety zone is for the annual New York Super Boat Race held on the Lower Hudson River between Battery Park and Pier 76, Manhattan. This event is held annually on the Sunday following Labor Day. This rule is being proposed to provide for the safety of life on navigable waters during the event, to give the marine community the opportunity to comment on this event, and to decrease the amount of annual paperwork required for this event.

Regulatory Evaluation

This proposed 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. It has not been reviewed by the Office of Management and Budget 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 proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Although this regulation prevents traffic from transiting a portion of the Lower Hudson River during the race, the effect of this regulation will not be significant for several reasons: it is an annual event with local support, the volume of commercial vessel traffic transiting the Lower Hudson River on a Sunday is less than half of the normal daily traffic volume; pleasure craft desiring to view the event will be directed to designated spectator viewing areas outside the safety zone; pleasure craft can take an alternate route through the East River and the Harlem River; the duration of the event is limited to four and one-half hours; the extensive advisories which will be made to the affected maritime community by Local Notice to Mariners, Safety Voice Broadcast, and facsimile notification. Additionally, commercial ferry traffic will be authorized to transit around the perimeter of the safety zone for their scheduled operations at the direction of the Patrol Commander.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. ''Small entities'' include 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.

For the reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Coast Guard must consider whether this rule will result in an annual expenditure by state, local, and tribal governments, in the aggregate of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected. No state, local, or tribal government entities will be effected by this rule, so this rule will not result in annual or aggregate costs of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

Environment

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

List of Subjects in 33 CFR Part 165

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

Proposed Regulation

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—[AMENDED]

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

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

2. Add § 165.162 to read as follows:

§ 165.162 Safety Zone: New York Super Boat Race, Hudson River, New York.

(a) *Regulated Area.* The following area is a safety zone: All waters of the Lower Hudson River south of a line drawn from the northwest corner of Pier 76 in Manhattan to a point on the New Jersey shore in Weehawken, New Jersey at approximate position 40°45′52″N 074°01′01″W (NAD 1983) and north of a line connecting the following points (all coordinates are NAD 1983):

Latitude	*Longitude*
40°42′16.0″N	074°01′09.0″W, then south to
40°41′55.0″N	074°01′16.0″W, then west to
40°41′47.0″N	074°01′36.0″W, then northwest to
40°41′55.0″N	074°01′59.0″W, then to shore at
40°42′20.5″N	074°02′06.0″W.

(b) *Regulations.*

(1) Vessels not participating in this event, swimmers, and personal watercraft of any nature are prohibited from entering or moving within the regulated area unless authorized by the Patrol Commander.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(c) *Effective period.* This section is in effect annually from 11:30 a.m. until 4:00 p.m. on the Sunday following Labor Day.

Dated: January 21, 1999.

R.E. Bennis,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 99–3514 Filed 2–11–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6301–1]

RIN 2060–AE08

National Emission Standards for Hazardous Air Pollutants for Source Categories: Ferroalloys Production, Mineral Wool Production, Primary Lead Smelting, and Wool Fiberglass Manufacturing; Supplement To Proposed Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplement to proposed rules; Notice of public hearing.

SUMMARY: Today's proposal would alter the national emission standards for hazardous air pollutants (NESHAP) previously proposed for the source categories of ferroalloys production, mineral wool production, primary lead smelting, and wool fiberglass manufacturing. Today's action proposes changes to the approach for determining compliance for owners or operators of fabric filters (i.e., baghouses) with bag leak detection systems, proposes changes to the approach for determining compliance through the use of defined monitoring parameters for air pollution control equipment and/or manufacturing processes, and proposes to add performance evaluation requirements for temperature monitoring devices. To determine which of these proposed changes would affect specific source categories, see the appropriate *Summary of Proposed Changes* section for each source category.

Under section 112(j)(2) of the Clean Air Act (Act), the ''hammer'' date is the date by which affected facilities will be required to apply for a case-by-case emission limitation if the EPA has not promulgated a generally applicable emission standard. For these source categories, that date is May 15, 1999. The comment period for this action is 30 days. If a public hearing is held, the comment period for this action will be extended to 45 days. The comment period for this action is shorter than the normal comment period of 60 days so that these NESHAP may be promulgated by the May 15, 1999 ''hammer'' date.

DATES: Comments are requested only on information presented in this action. Comments on today's supplementary proposal must be received on or before March 15, 1999, unless a request to speak at a public hearing is received by February 22, 1999. If a hearing is held, written comments must be received by March 29, 1999. If held, the hearing will take place at 10 a.m. on February 26, 1999.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate) to the docket for the source category being addressed, Air and Radiation Docket and Information Center (6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Docket numbers are as follows: ferroalloys production—Docket No. A–92–59; mineral wool production—Docket No. A–95–33; primary lead smelting—Docket No. A–97–33; and wool fiberglass manufacturing—Docket No. A–95–24. The EPA requests that a separate copy of the comments also be sent to the appropriate contact person for the specific source category listed below in the **FOR FURTHER INFORMATION CONTACT** section. Comments and data may also be submitted electronically by following the instructions provided in the **SUPPLEMENTARY INFORMATION** section. No confidential business information should be submitted through electronic mail.

Docket. The dockets, which contain supporting information used in developing the NESHAP, are located at the above address in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. Copies of this information may be obtained by request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: *Ferroalloys production.* Mr. Conrad Chin, Metals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919)541–1512, electronic mail address ''chin.conrad@epamail.epa.gov''.

Mineral wool production. Ms. Mary Johnson, Minerals and Inorganic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919)541–5025, electronic mail address ''johnson.mary@epamail.epa.gov''.

Primary lead smelting. Mr. Kevin Cavender, Metals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919)541–2364, electronic mail address ''cavender.kevin@epamail.epa.gov''.

Wool fiberglass manufacturing. Mr. Bill Neuffer, Minerals and Inorganic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919)541–5435, electronic mail address ''neuffer.bill@epamail.epa.gov''.

SUPPLEMENTARY INFORMATION:

Technology Transfer Network. In addition to being available in the dockets, an electronic copy of today's notice is available through the Technology Transfer Network (TTN). Following proposal, a copy of the supplement to the proposed rules, including the proposed regulatory text, will be posted at the TTN's policy and guidance page for newly proposed or promulgated rules (http://www.epa.gov/ttn/oarpg/t3pfpr.html). The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Public hearing. If anyone contacts the EPA requesting to speak at a public hearing by the required date (see **DATES**), a public hearing will be held at the EPA's Office of Administration Auditorium, 79 T.W. Alexander Drive, Research Triangle Park, North Carolina. Persons interested in attending the hearing or in making an oral presentation should notify Ms. Mary Hinson, Metals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919)541–5601 by February 22, 1999.

Electronic filing. Electronic comments can be sent directly to the EPA at ''a-and-r-docket@epamail.epa.gov''. Electronic comments and data 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 disks in WordPerfect 5.1 or 6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the appropriate docket number. Electronic comments may be filed online at many Federal Depository Libraries.

Confidential Business Information. Commenters wishing to submit proprietary information for consideration should clearly distinguish such information from other comments and clearly label it ''Confidential Business Information.'' Submissions containing such proprietary information should be sent directly to the appropriate contact person, c/o Ms. Melva Toomer, Document Control Officer, OAQPS/PRRMS (MD–11), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket. Information covered by such claim of confidentiality will be disclosed by the EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the submission may be made available to the public without further notice to the commenter.

Regulated entities. Categories and entities potentially regulated by this action include:

Category	Examples of regulated entities
Industry	Ferroalloys production facilities (SIC 3313).
Industry	Mineral wool production facilities (SIC 3296).
Industry	Primary lead smelting facilities (SIC 3339).
Industry	Wool fiberglass manufacturing facilities (SIC 3296).
Federal government	None.
State/local/tribal government.	None.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by final action on this supplemental proposal. To determine whether your facility may be regulated by final action on this supplement to the proposed rules, you should carefully examine the applicability criteria in the proposed rule.

Outline. The information in this preamble is organized as follows:

I. Statutory Authority
II. Background
A. Ferroalloys Production NESHAP
B. Mineral Wool Production NESHAP
C. Primary Lead Smelting NESHAP
D. Wool Fiberglass Manufacturing NESHAP
III. Summary of Proposed Changes
A. Ferroalloys Production NESHAP
B. Mineral Wool Production NESHAP
C. Primary Lead Smelting NESHAP
D. Wool Fiberglass Manufacturing NESHAP
IV. Rationale for Changes to the Proposed Rules
V. Administrative Requirements
A. Docket
B. Public Hearing
C. Executive Order 12866—Regulatory Planning and Review
D. Executive Order 12875—Enhancing the Intergovernmental Partnership
E. Executive Order 13084—Consultation and Coordination with Indian Tribal Governments
F. Unfunded Mandates Reform Act
G. Regulatory Flexibility
H. Paperwork Reduction Act
I. Pollution Prevention Act
J. National Technology Transfer and Advancement Act
K. Executive Order 13045—Protection of Children from Environmental Health Risks and Safety Risks
L. Clean Air Act

I. Statutory Authority

The statutory authority for this supplement to the proposed rules is provided by sections 101, 112, 114, 116, and 301 of the Act, as amended (42 U.S.C. 7401, 7412, 7414, 7416, and 7601). This proposed rulemaking is also subject to section 307(d) of the Act (42 U.S.C. 7407(d)).

II. Background

A. Ferroalloys Production NESHAP

The proposed NESHAP for ferroalloys production was published in the **Federal Register** on August 4, 1998 (63 FR 41508). Only two existing facilities would be affected by the NESHAP, a producer of ferromagnesium alloys and a producer of ferronickel alloys. The proposed NESHAP would establish emission limits for particulate emissions from the two regulated facilities. The proposal requires owners and operators to develop and operate according to a Standard Operating Procedures (SOP) Manual for the operation and maintenance of baghouses. The proposal also requires owners and operators of new or reconstructed ferroalloys production facilities to install and operate a bag leak detection system as a part of the SOP for baghouses.

B. Mineral Wool Production NESHAP

The EPA proposed NESHAP for new and existing sources in mineral wool production facilities on May 8, 1997 (62 FR 25370). The proposed rule would establish emission limits for particulate matter (PM) emissions from existing cupolas. In addition to PM, emissions of carbon monoxide (CO) would be regulated for new cupolas. Emissions of formaldehyde would be regulated for new and existing curing ovens. Particulate matter would serve as a surrogate for metal hazardous air pollutants (HAPs) and CO would be a surrogate for carbonyl sulfide (COS). As well as being a hazardous air pollutant (HAP), formaldehyde would serve as a surrogate for the HAP phenol. In addition to emission limits, the proposed rule specifies requirements for air pollution control equipment and/or manufacturing processes that would be

enforceable and would be used to determine compliance with the applicable emission standards. The proposed rule requires that each affected source perform an initial compliance test to demonstrate compliance with the emission limits. The initial compliance tests would also be used to establish levels of control device parameters and process parameters used to monitor compliance. The proposed rule requires that these control device parameters and process parameters be monitored on a regular basis in order to determine that the control device or process equipment is operating properly. The proposed rule also specifies requirements for notifications, reporting, and recordkeeping.

C. Primary Lead Smelting NESHAP

The proposed NESHAP for primary lead smelting was published in the **Federal Register** on April 17, 1998 (63 FR 19200). Three existing primary lead facilities would be affected by the proposed rule. The proposal would establish a ''plant wide'' emission limit of 380 grams per megagram of lead produced from the aggregation of emissions discharged from eight identified process and process fugitive sources. The proposal also requires owners and operators of primary lead smelters to develop and operate according to SOP Manuals for the control of fugitive dust sources and for the operation and maintenance of baghouses. The SOP for baghouses requires owners and operators of primary lead smelters to install and operate bag leak detection systems.

D. Wool Fiberglass Manufacturing NESHAP

On March 31, 1997 (62 FR 15228), the EPA proposed the NESHAP for new and existing sources in wool fiberglass manufacturing facilities. The proposed rule would establish emission limits for PM emissions from glass melting furnaces located at wool fiberglass manufacturing plants and formaldehyde emission limits for affected rotary spin and flame attenuation manufacturing lines. The PM emission limits would serve as a surrogate for metal HAPs (arsenic, chromium, and lead compounds). Formaldehyde is a HAP and would serve as a surrogate for the HAPs phenol and methanol. The proposed rule would require that each affected source perform an initial compliance test to demonstrate compliance with the emission limits. For air pollution control devices and process equipment used to comply with the emission limits, the initial compliance tests would also be used to establish levels of control device parameters and process parameters used to monitor compliance. The proposed rule would require that these control device parameters and process parameters be monitored on a regular basis in order to determine that the control device or process equipment is operating properly. The proposed rule would also specify requirements for notifications, reporting, and recordkeeping.

III. Summary of Proposed Changes

A. Ferroalloys Production NESHAP

This supplement to the proposed rule would enhance the requirements regarding bag leak detection systems in §§ 63.1625 and 63.1655 of the proposed rule to include an enforceable operating limit, such that the owner or operator would be in violation of the standard's operating limit if the alarm on a bag leak detection system sounds for more than five percent of the total operating time in each six-month reporting period. This supplementary proposal also specifies that each time the alarm sounds and the owner or operator initiates corrective actions within one hour of the alarm, one hour of alarm time would be counted. If the owner or operator takes longer than one hour to initiate corrective actions, the EPA proposes that alarm time would be counted as the actual amount of time taken by the owner or operator to initiate corrective actions. If inspection of the fabric filter system demonstrates that no corrective actions are necessary, no alarm time would be counted. This supplementary proposal also proposes that owners and operators be required to continuously record the output from a bag leak detection system and to maintain these records as specified in § 63.10 of the general provisions in subpart A of this part.

B. Mineral Wool Production NESHAP

This supplement to the proposed rule would enhance the requirements regarding bag leak detection systems in § 63.1178 of the proposed rule to include an enforceable operating limit, such that the owner or operator would be in violation of the standard's operating limit if the alarm on a bag leak detection system sounds for more than five percent of the total operating time in each six-month reporting period. Section 63.1178(b)(9) of the proposed rule specifies that a quality improvement plan (QIP) be developed and implemented when the alarm on a bag leak detection system sounds for more than five percent of the total operating time in each six-month reporting period. The EPA determined that this requirement is not necessary because the proposed enforceable operating limit would address the EPA's concerns that the fabric filter be properly operated and maintained, and would help assure that the emission limit would be met. Accordingly, this supplement to the proposed rule would delete the proposed requirement for a QIP.

This supplement to the proposed rule also specifies that each time the alarm sounds and the owner or operator initiates corrective actions within one hour of the alarm, one hour of alarm time would be counted. If the owner or operator takes longer than one hour to initiate corrective actions, the EPA proposes that alarm time would be counted as the actual amount of time taken by the owner or operator to initiate corrective actions. If inspection of the fabric filter system demonstrates that no corrective actions are necessary, no alarm time would be counted. This supplementary proposal also proposes that owners and operators be required to continuously record the output from a bag leak detection system and to maintain these records as specified in § 63.10 of the general provisions in subpart A of this part.

This supplement to the proposed rule also would require the owner or operator to conduct a performance evaluation for each temperature monitoring device that is used to measure and record the operating temperature of an incinerator that is used to control formaldehyde emissions from new and existing curing ovens and CO emissions from new cupolas according to § 63.8(e) of the general provisions in subpart A of this part. The following requirements are proposed:

(1) The definitions, installation specifications, test procedures, and data reduction procedures for determining calibration drift, relative accuracy, and reporting described in sections 2, 3, 5, 7, 8, 9, and 10 of Performance Specification 2 of 40 CFR part 60 appendix B must be used to conduct the performance evaluation;

(2) the recorder response range must include zero and 1.5 times the average temperature level used to monitor compliance;

(3) the monitoring system calibration drift must not exceed two percent of 1.5 times the average temperature level used to monitor compliance;

(4) the monitoring system relative accuracy must not exceed 20 percent; and

(5) the reference method must be a National Institute of Standards and

Technology calibrated reference thermocouple-potentiometer system, or an alternate reference system that must be approved by the Administrator.

The table that specifies which general provisions apply, or do not apply, to owners and operators subject to the requirements of the proposed NESHAP is proposed to be revised as necessary to reflect today's proposed changes.

C. Primary Lead Smelting NESHAP

This supplement to the proposed rule would enhance the requirements regarding bag leak detection systems in § 63.1547 of the proposed rule to include an enforceable operating limit, such that the owner or operator would be in violation of the standard's operating limit if the alarm on a bag leak detection system sounds for more than five percent of the total operating time in each six-month reporting period. This supplementary proposal also specifies that each time the alarm sounds and the owner or operator initiates corrective actions within one hour of the alarm, one hour of alarm time would be counted. If the owner or operator takes longer than one hour to initiate corrective actions, the EPA proposes that alarm time would be counted as the actual amount of time taken by the owner or operator to initiate corrective actions. If inspection of the fabric filter system demonstrates that no corrective actions are necessary, no alarm time would be counted. This supplementary proposal also proposes that owners and operators be required to continuously record the output from a bag leak detection system and to maintain these records as specified in § 63.10 of the general provisions in subpart A of this part.

D. Wool Fiberglass Manufacturing NESHAP

This supplement to the proposed rule would enhance the monitoring requirements in § 63.1386 of the proposed rule for control devices and process modifications that are used to comply with the PM emission limits for affected glass-melting furnaces and the formaldehyde emission limits for affected rotary spin and flame attenuation manufacturing lines. The proposed standard contains a number of operating parameters, the monitoring of which helps ensure continuous compliance with the emission limits through continuous emissions reductions. Several parameters (those associated with electrostatic precipitators (ESPs), glass-melting furnaces, and scrubbers, for instance) must be monitored during and after performance tests, which demonstrate on a site-specific basis that the source is complying with the emission limits under certain operating parameter conditions. Today's action would impose an enforceable operating limit, such that the owner or operator would be in violation of the standard's operating limits if the parameter(s) being monitored for a control device or a process modification deviate from the established limits for more than five percent of the total operating time, instead of the proposed ten percent of the total operating time, during each six-month reporting period.

Today's supplement to the proposed rule also changes the proposed monitoring requirements for cold top electric furnaces. This supplementary proposal would require the owner or operator to operate each cold top electric furnace such that the air temperature, at a location 46 to 61 centimeters (18 to 24 inches) above the molten glass surface, does not exceed 120°C (250°F). The proposal does not specify that the air temperature above the glass melt must be monitored. The EPA has determined that because, by definition, a cold top electric furnace is designed and operated so that the air temperature, at a location 46 to 61 centimeters (18 to 24 inches) above the molten glass surface, does not exceed 120°C (250°F), it is not necessary to allow cold top electric furnaces to exceed this temperature for up to five percent of the total operating time in each six-month reporting period. Based on this proposed revision, a definition for *cold top electric furnace* is proposed to be added. The supplement to the proposed rule specifically requires that the air temperature above the molten glass surface of a cold top electric furnace be monitored and that records be maintained. This would not impose additional burden on the owner or operator since the proposed rule includes a general requirement to record numerous operating parameter data. See proposed § 63.1386(d).

Today's action would also enhance the proposed rule's requirements regarding bag leak detection systems to include an enforceable operating limit, such that the owner or operator would be in violation of the standard's operating limit if the alarm on a bag leak detection system sounds for more than five percent of the total operating time in each six-month reporting period. The proposed rule specifies that a QIP be developed and implemented when the alarm on a bag leak detection system sounds for more than five percent of the total operating time in each six-month reporting period, or when a monitored control device or process parameter is outside the level established during the performance test for more than five percent of the total operating time in each six-month reporting period. The EPA determined that this requirement is not necessary because the proposed enforceable operating limits would address the EPA's concerns that control devices and manufacturing processes be properly operated and maintained, and would help assure that the emission limits would be met. Accordingly, this supplement to the proposed rule would delete the proposed requirement for a QIP.

This supplement to the proposed rule also specifies that each time the alarm sounds and the owner or operator initiates corrective actions within one hour of the alarm, one hour of alarm time would be counted. If the owner or operator takes longer than one hour to initiate corrective actions, the EPA proposes that alarm time would be counted as the actual amount of time taken by the owner or operator to initiate corrective actions. If inspection of the fabric filter system demonstrates that no corrective actions are necessary, no alarm time would be counted. This supplementary proposal also proposes that owners and operators be required to continuously record the output from a bag leak detection system and to maintain these records as specified in § 63.10 of the general provisions in subpart A of this part.

This supplement to the proposed rule also would require the owner or operator to conduct a performance evaluation for each temperature monitoring device that is used to measure and record the operating temperature of an incinerator that is used to control formaldehyde emissions from rotary spin or flame attenuation manufacturing lines and for each temperature monitoring device that is used to measure and record the temperature above the molten glass surface in a cold top electric furnace according to § 63.8(e) of the general provisions in subpart A of this part. The following requirements are proposed:

(1) The definitions, installation specifications, test procedures, and data reduction procedures for determining calibration drift, relative accuracy, and reporting described in sections 2, 3, 5, 7, 8, 9, and 10 of Performance Specification 2 of 40 CFR part 60 appendix B must be used to conduct the performance evaluation;

(2) the recorder response range must include zero and 1.5 times the average temperature level used to monitor compliance;

(3) the monitoring system calibration drift must not exceed two percent of 1.5

times the average temperature level used to monitor compliance;

(4) the monitoring system relative accuracy must not exceed 20 percent; and

(5) the reference method must be a National Institute of Standards and Technology calibrated reference thermocouple-potentiometer system, or an alternate reference system that must be approved by the Administrator.

The table that specifies which general provisions apply, or do not apply, to owners and operators subject to the requirements of the proposed NESHAP is proposed to be revised as necessary to reflect today's proposed changes.

IV. Rationale for Changes to the Proposed Rules

The EPA is proposing the changes to the monitoring provisions of the proposed rules in conformance with its policy governing monitoring. When determining appropriate monitoring options for the purpose of demonstrating continuous compliance, the EPA considers the availability and feasibility of the following monitoring options in a ''top-down'' fashion: (1) continuous emissions monitoring system (CEMS) for the HAP emitted, (2) CEMS for HAP surrogates, (3) monitoring control device or process operating parameters, and (4) monitoring work practices. Thus, where available and feasible, the EPA specifies CEMS for continuous compliance monitoring of HAPs. This option allows continuous compliance with the emission limit to be determined directly. Where a CEMS for the regulated HAP is not available or feasible, the EPA specifies monitoring a surrogate pollutant with a CEMS or monitoring a control device or process operating parameter that is relevant to compliance status. Only when these options are not feasible does the EPA specify the monitoring of work practice requirements as a means of ensuring continuous compliance.

When compliance with a HAP or HAP surrogate emission limit cannot be directly monitored on a continuous basis, the rule generally will include a control device or process operating limit with which continuous compliance can be assessed. The operating limit becomes an enforceable limit of the rule. Section 302(k) of the Act specifically defines ''emission standard'' and ''emission limitation'' to include ''any requirement relating to the operation or maintenance of a source to assure continuous emission reduction.'' Monitoring of a control device or process operating parameter with an enforceable operating limit helps assure continuous compliance with the emission limit through continuous emission reduction. The operating limit is a separately enforceable requirement of the rule and is not secondary to the emission limit.

By requiring sources to continuously monitor their compliance with specific control device and process operating parameters and by making deviations from such operating parameters for more than five percent of the total operating time in each six-month reporting period a violation of the operating limit, the monitoring requirements help assure continuous compliance with the emission limits through continuous emissions reductions. Likewise, the continuous monitoring of the fabric filter using a bag leak detection system, and the enforceable five percent threshold level, will help ensure that the fabric filter is being operated and maintained properly and thereby helps assure continuous compliance with the emission limit through continuous emission reduction. The EPA is proposing the requirement to continuously record bag leak detection system output to ensure that data necessary to assess compliance with the newly proposed operating limit for bag leak detection system alarms would be available. In the absence of such information, enforcement personnel would be unable to determine whether the operating limit is being met. The output records would also provide data necessary to assess the magnitude of the output level above the alarm set point, and would assist owners and operators in properly operating and maintaining the fabric filter and in diagnosing fabric filter upsets. As proposed, an alarm simply indicates that the set point was exceeded, but it does not relate to the deviation or magnitude of the output level above the set point.

By requiring that each temperature monitoring device meet certain performance and equipment specifications, uniformity of requirements across the affected industry will be achieved. Also, by conducting a performance evaluation, the EPA can be sure that the temperature measurements and, therefore, the records being kept by the owner or operator, are accurate.

V. Administrative Requirements

A. Docket

The docket is intended to be an organized and complete file of the administrative records compiled by the EPA. The docket is a dynamic file because material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the docket will contain the record in case of judicial review. (See section 307(d)(7)(A) of the Act.) The location of the dockets, which will include all public comments received regarding this supplement to the proposed rules, is in the **ADDRESSES** section at the beginning of this preamble.

B. Public Hearing

If a request to speak at a public hearing is received, a public hearing will be held on this proposal in accordance with section 307(d)(5) of the Act. If a public hearing is held, the EPA may ask clarifying questions during the oral presentation but will not respond to the presentations or comments. To provide an opportunity for all who may wish to speak, oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement (see **DATES**). Written statements and supporting information will be considered with equivalent weight as any oral statement and supporting information subsequently presented at a public hearing, if held. A verbatim transcript of the hearing and any written statements will be placed in the docket and will be available for public inspection and copying, or mailed upon request, at the EPA's Air and Radiation Docket and Information Center (see **ADDRESSES**).

C. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this action is not a ''significant regulatory action'' under the terms of the Executive Order and is therefore not subject to OMB review.

D. Executive Order 12875—Enhancing the Intergovernmental Partnership

Under Executive Order 12875, the EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or the EPA consults with those governments. If the EPA complies by consulting, Executive Order 12875 requires the EPA to provide to the OMB a description of the extent of the EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires the EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's supplement to the proposed rules does not create a mandate on State, local or tribal governments. The supplement to the proposed rules does not impose any enforceable duties on State, local or tribal governments, because they do not own or operate any sources that would be subject to this supplement to the proposed rules. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this supplement to the proposed rules.

E. Executive Order 13084—Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or the EPA consults with those governments. If the EPA complies by consulting, Executive Order 13084 requires the EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires the EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's supplement to the proposed rules does not significantly or uniquely affect the communities of Indian tribal governments. No affected facilities are owned or operated by Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this supplement to the proposed rules.

F. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this supplement to the proposed rules does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This supplementary proposal would affect two ferroalloys production facilities, fifteen mineral wool production facilities, three primary lead smelting facilities, and twenty-seven wool fiberglass manufacturing facilities. The EPA projects that annual economic impacts would be far less than $100 million. Thus, today's supplement to the proposed rules is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that this supplement to the proposed rules contains no regulatory requirements that might significantly or uniquely affect small governments because it does not impose any enforceable duties on small governments; such governments own or operate no sources subject to these proposed rules and therefore would not be required to purchase control systems to meet the requirements of these proposed rules.

G. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. None of the firms in the ferroalloys production, primary lead smelting, or wool fiberglass manufacturing industries are small businesses. The EPA has determined that seven of the ten mineral wool production firms that potentially would be subject to this supplement to the proposed rules are small firms. The EPA has met with all of these small firms and their trade association. Also, a representative of the

EPA's Office of the Small Business Ombudsman participated in the development of the Mineral Wool Production NESHAP proposal as a work group member to ensure that the requirements of the standards were examined for potential adverse economic impacts.

Due to the nature of this supplement to the proposed rules, it is anticipated that there will be very little additional cost associated with its implementation. Revision of the requirements regarding bag leak detection systems on fabric filters such that it is a violation of the operating limit if the alarm sounds for more than five percent of the total operating time in each six-month reporting period does not impose any cost on the affected firms. The only additional cost associated with the proposed requirement to continuously record bag leak detection system output would be the cost of a data recording system (e.g., strip chart) and the cost of maintaining the associated records. Capital and annual costs for a strip chart are estimated to be $1,500 and $1,550/year, respectively, per bag leak detection system.

The EPA anticipates that no additional cost will result from the proposed performance evaluation requirements for temperature monitoring devices because the performance evaluation and calibration requirements simply provide uniform guidance on how to meet the requirements in the affected proposed rules to properly calibrate, operate, and maintain all monitoring devices. Therefore, based on this information, I certify that this action will not have a significant economic impact on a substantial number of small entities.

H. Paperwork Reduction Act

The information collection requirements associated with each of the proposed NESHAP were submitted for approval to the OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* at proposal. Today's supplement to the proposed rules would require owners and operators of fabric filters with bag leak detection systems to continuously record the output from each bag leak detection system. The annual monitoring, reporting, and recordkeeping burden for this requirement (averaged over the first three years after the effective date of the rule) is estimated to be 32 labor hours per year at a total annual cost of $880/year per bag leak detection system. This estimate includes one-time purchase and installation of a data recording system (e.g., strip chart), and recordkeeping and reporting. Upon promulgation of each NESHAP, its information collection requirements will be revised as necessary.

An Agency may not conduct or sponsor, and a person is not required to respond to, a request for the collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

I. Pollution Prevention Act

The Pollution Prevention Act of 1990 states that pollution should be prevented or reduced at the source whenever feasible. During the development of the proposed NESHAP, the EPA explored opportunities to eliminate or reduce emissions through the application of new processes or work practices. Due to the nature of today's action, there are no additional opportunities to eliminate or reduce emissions through the application of new processes or work practices.

J. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), Pub. L. 104–113 (March 7, 1996), the EPA is required to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) which are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by the EPA, the NTTAA requires the EPA to provide Congress, through the OMB, an explanation of the reasons for not using such standards. Today's action does not put forth any technical standards as part of the proposed revisions. Therefore, consideration of voluntary consensus standards was not required.

K. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns the environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA.

The 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 supplement to the proposed rules is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it is based on technology performance and not on health or safety risks.

L. Clean Air Act

Pursuant to section 112(d)(6) of the Act, the affected NESHAP will be reviewed eight years from the date of promulgation. This review may include an evaluation of the residual health risks under section 112(f), any overlap with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements, Ferroalloys production, Mineral wool production, Primary lead smelting, Wool fiberglass manufacturing.

Dated: February 8, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 63 of title 40, chapter I, of the Code of Federal Regulations is proposed to be 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.*

Subpart DDD—[Amended]

2. Section 63.1178, as proposed at 62 FR 25370 on May 8, 1997, is amended by revising paragraph (b)(9), by adding new paragraph (b)(10), and by removing the word ''and'' at the end of paragraph (b)(8) to read as follows:

§ 63.1178 Monitoring requirements.

* * * * *

(b) * * *

(9) The owner or operator shall operate and maintain the fabric filter so that the alarm on the bag leak detection system does not sound for more than five percent of the total operating time in a six-month reporting period. Each time the alarm sounds and the owner or operator initiates corrective actions within one hour of the alarm, one hour of alarm time will be counted. If the owner or operator takes longer than one hour to initiate corrective actions, alarm time will be counted as the actual amount of time taken by the owner or operator to initiate corrective actions. If inspection of the fabric filter system demonstrates that no corrective actions are necessary, no alarm time will be counted; and

(10) The owner or operator shall continuously record the output from the bag leak detection system.

* * * * *

3. Section 63.1181, as proposed at 62 FR 25370 on May 8, 1997, is amended by redesignating paragraphs (d)(3), (d)(4), and (d)(5) as paragraphs (d)(4), (d)(5), and (d)(6) and by adding a new paragraph (d)(3) to read as follows:

§ 63.1181 Notification, recordkeeping, and reporting requirements.

* * * * *

(d) * * *

(3) Procedures for properly operating and maintaining each monitoring device. These procedures must be consistent with the requirements for continuous monitoring systems in the general provisions in subpart A of this part and must include a performance evaluation for each temperature monitoring device according to § 63.8(e) of the general provisions. The following requirements must be met:

(i) The definitions, installation specifications, test procedures, and data reduction procedures for determining calibration drift, relative accuracy, and reporting described in sections 2, 3, 5, 7, 8, 9, and 10 of Performance Specification 2 of 40 CFR part 60 appendix B must be used to conduct the performance evaluation.

(ii) The recorder response range must include zero and 1.5 times the average temperature identified in § 63.1179(b)(5) of this subpart.

(iii) The monitoring system calibration drift must not exceed two percent of 1.5 times the average temperature identified in § 63.1179(b)(5) of this subpart.

(iv) The monitoring system relative accuracy must not exceed 20 percent.

(v) The reference method must be a National Institute of Standards and Technology calibrated reference thermocouple-potentiometer system, or an alternate reference system that must be approved by the Administrator.

* * * * *

4. Appendix B to Subpart DDD, as proposed at 62 FR 25370 on May 8, 1997, is amended by revising the entries ''63.8(a)(2),'' ''63.8(d),'' ''63.8(e),'' ''63.10(c)(6),'' and ''63.10(c)(14),'' by removing the entries ''63.8(c)(4)–(c)(8),'' ''63.9(g),'' and ''63.10(e)(1)–(e)(2),'' and by adding the entries ''63.8(c)(4),'' ''63.8(c)(5),'' ''63.8(c)(6)–(c)(8),'' ''63.9(g)(1),'' ''63.9(g)(2)–(g)(3),'' ''63.10(e)(1),'' ''63.10(e)(2)(i),'' and ''63.10(e)(2)(ii)'' to read as follows:

Appendix B To Subpart DDD of Part 63—Applicability of General Provisions (40 CFR Part 63, Subpart A) to Subpart DDD

Citation	Requirement	Applies to subpart DDD	Comment
* *	*	* *	* *
63.8(a)(2)		Yes.	
* *	*	* *	* *
63.8(c)(4)		Yes.	
63.8(c)(5)		No	Subpart DDD does not require COMS.
63.8(c)(6)–(c)(8)		Yes.	
63.8(d)	Quality Control	Yes.	
63.8(e)	CMS Performance Evaluation	Yes.	
* *	*	* *	* *
63.9(g)(1)	Additional CMS Notifications	Yes.	
63.9(g)(2)–(g)(3)		No	Subpart DDD does not require COMS or CEMs.
* *	*	* *	* *
63.10(c)(6)		Yes.	
* *	*	* *	* *
63.10(c)(14)		Yes.	
* *	*	* *	* *
63.10(e)(1)	Additional CMS Reports	No	Subpart DDD does not require CEMS.
63.10(e)(2)(i)		Yes.	
63.10(e)(2)(ii)		No	Subpart DDD does not require COMS.
* *	*	* *	* *

Subpart NNN—[Amended]

5. Section 63.1381, as proposed at 62 FR 15228 on March 31, 1997, is amended by adding in alphabetical order the definition for ''Cold top electric furnace'' to read as follows:

§ 63.1381 Definitions.

* * * * *

Cold top electric furnace means an all-electric glass-melting furnace that

operates with a temperature of 120 °C (250 °F) or less as measured at a location 46 to 61 centimeters (18 to 24 inches) above the molten glass surface.

* * * * *

6. Section 63.1386, as proposed at 62 FR 15228 on March 31, 1997, is amended by revising paragraphs (b)(9), (c)(3), (d)(3), (d)(4), (e)(4), (f)(1), (h)(3), and (i)(3), by removing paragraphs (c)(4), (e)(5), (h)(4), and (i)(4), and by adding new paragraph (b)(10) to read as follows:

§ 63.1386 Monitoring requirements.

* * * * *

(b) * * *

(9) The owner or operator shall operate and maintain the baghouse such that the alarm on the bag leak detection system does not sound for more than 5 percent of the total operating time in a 6-month block reporting period. Each time the alarm sounds and the owner or operator initiates corrective actions within one hour of the alarm, one hour of alarm time will be counted. If the owner or operator takes longer than one hour to initiate corrective actions, alarm time will be counted as the actual amount of time taken by the owner or operator to initiate corrective actions. If inspection of the baghouse demonstrates that no corrective actions are necessary, no alarm time will be counted.

(10) The owner or operator shall continuously record the output from the bag leak detection system.

(c) * * *

(3) The owner or operator shall operate the ESP such that the monitored ESP parameter(s) is not outside the limit(s) established during the performance test for more than 5 percent of the total operating time in a 6-month block reporting period.

(d) * * *

(3) The owner or operator shall operate each glass-melting furnace, which uses no add-on controls and which is not a cold top electric furnace, such that the monitored parameter(s) is not outside the limit(s) established during the performance test for more than 5 percent of the total operating time in a 6-month block reporting period.

(4)(i) The owner or operator shall operate each cold top electric furnace such that the temperature does not exceed 120 °C (250 °F) as measured at a location 46 to 61 centimeters (18 to 24 inches) above the molten glass surface.

(ii) The owner or operator shall conduct a performance evaluation for each temperature monitoring device according to § 63.8(e) of the general provisions. The definitions, installation specifications, test procedures, and data reduction procedures for determining calibration drift, relative accuracy, and reporting described in Performance Specification 2, 40 CFR part 60, appendix B, sections 2, 3, 5, 7, 8, 9, and 10 must be used to conduct the evaluation. The temperature monitoring device must meet the following performance and equipment specifications:

(A) The recorder response range must include zero and 180 °C (375 °F).

(B) The monitoring system calibration drift shall not exceed 2 percent of 180 °C (375 °F).

(C) The monitoring system relative accuracy shall not exceed 20 percent.

(D) The reference system shall be a National Institute of Standards and Technology calibrated reference thermocouple-potentiometer system or an alternate reference, subject to the approval of the Administrator.

(e) * * *

(4) The owner or operator shall operate each glass-melting furnace such that the glass pull rate does not exceed, by more than 20 percent, the average glass pull rate established during the performance test for more than 5 percent of the total operating time in a 6-month block reporting period.

(f)(1)(i) The owner or operator who uses an incinerator to control formaldehyde emissions from forming or curing shall install, calibrate, maintain, and operate a monitoring device that continuously measures and records the operating temperature in the firebox of each incinerator.

(ii) The owner or operator shall conduct a performance evaluation for each temperature monitoring device according to § 63.8(e) of the general provisions. The definitions, installation specifications, test procedures, and data reduction procedures for determining calibration drift, relative accuracy, and reporting described in Performance Specification 2, 40 CFR part 60, appendix B, sections 2, 3, 5, 7, 8, 9, and 10 must be used to conduct the evaluation. The temperature monitoring device must meet the following performance and equipment specifications:

(A) The recorder response range must include zero and 1.5 times the average temperature identified in § 63.1385(a)(12).

(B) The monitoring system calibration drift shall not exceed 2 percent of 1.5 times the average temperature identified in § 63.1387(a)(9).

(C) The monitoring system relative accuracy shall not exceed 20 percent.

(D) The reference system shall be a National Institute of Standards and Technology calibrated reference thermocouple-potentiometer system or an alternate reference, subject to the approval of the Administrator.

* * * * *

(h)* * *

(3) The owner or operator shall operate the process such that the monitored process parameter(s) is not outside the limit(s) established during the performance test for more than 5 percent of the total operating time in a 6-month block reporting period.

(i)* * *

(3) The owner or operator shall operate each scrubber such that each monitored parameter is not outside the limit(s) established during the performance test for more than 5 percent of the total operating time in a 6-month block reporting period.

* * * * *

7. Section 63.1389, as proposed at 62 FR 15228 on March 31, 1997, is amended by adding paragraph (e)(2)(ix), by removing the word ''and'' at the end of paragraph (e)(2)(vii), and by removing the period at the end of paragraph (e)(2)(viii) and adding in its place ''; and'' to read as follows:

§ 63.1389 Notification, recordkeeping, and reporting requirements.

* * * * *

(e) * * *

(2) * * *

(ix) The temperature 46 to 61 centimeters (18 to 24 inches) above the molten glass surface for each cold top electric furnace that is not equipped with an add-on control device for PM emissions control including any period when the temperature exceeds 120 °C (250 °F) and a brief explanation of the cause of the exceedance and the corrective action taken.

8. Table 1 to Subpart NNN, as proposed at 62 FR 15228 on March 31, 1997, is amended by removing the entries ''63.8(c),'' ''63.9(g),'' and ''63.10(e)(1)–(e)(3),'' and by adding the entries ''63.8(c)(1)–(c)(4),'' ''63.8(c)(5),'' ''63.8(c)(6)–(c)(8),'' ''63.9(g)(1),'' ''63.9(g)(2)–(g)(3),'' ''63.10(e)(1),'' ''63.10(e)(2)(i),'' ''63.10(e)(2)(ii),'' and ''63.10(e)(3)'' to read as follows:

TABLE 1 TO SUBPART NNN—APPLICABILITY OF GENERAL PROVISIONS

[40 CFR Part 63, Subpart A to SUBPART NNN]

General provisions citation	Requirement	Applies to subpart NNN	Comment
*	*	*	*
63.8(c)(1)–(c)(4)	CMS Operation/ Maintenance	Yes.	
63.8(c)(5)		No	Subpart NNN does not require COMS.
63.8(c)(6)–(c)(8)		Yes.	
*	*	*	*
63.9(g)(1)	Additional CMS Notifications	Yes.	
63.9(g)(2)–(g)(3)		No	Subpart NNN does not require COMS or CEMS.
*	*	*	*
63.10(e)(1)	Additional CMS Reports	No	Subpart NNN does not require CEMS.
63.10(e)(2)(i)		Yes.	
63.10(e)(2)(ii)		No	Subpart NNN does not require COMS.
63.10(e)(3)	Excess Emissions/CMS Reports	Yes.	
*	*	*	*

Subpart TTT—[AMENDED]

9. Section 63.147, as proposed at 63 FR 19200 on April 17, 1998, is amended by adding new paragraphs (e)(9) and (e)(10) to read as follows:

§ 63.1547 Monitoring requirements.

* * * * *

(e) * * *

(9) The owner or operator shall operate and maintain the fabric filter so that the alarm on the bag leak detection system does not sound for more than five percent of the total operating time in a six-month reporting period. Each time the alarm sounds and the owner or operator initiates corrective actions within one hour of the alarm, one hour of alarm time will be counted. If the owner or operator takes longer than one hour to initiate corrective actions, alarm time will be counted as the actual amount of time taken by the owner or operator to initiate corrective actions. If inspection of the fabric filter system demonstrates that no corrective actions are necessary, no alarm time will be counted.

(10) The owner or operator shall continuously record the output from the bag leak detection system.

* * * * *

Subpart XXX—[Amended]

10. Section 63.1625, as proposed at 63 FR 41508 on August 4, 1998, is amended by adding new paragraphs (a)(4)(viii) and (a)(4)(ix) to read as follows:

§ 63.1625 Monitoring requirements.

* * * * *

(a) * * *

(4) * * *

(viii) The owner or operator shall operate and maintain the baghouse so that the alarm on the bag leak detection system does not sound for more than five percent of the total operating time in a six-month reporting period. Each time the alarm sounds and the owner or operator initiates corrective actions within one hour of the alarm, one hour of alarm time will be counted. If the owner or operator takes longer than one hour to initiate corrective actions, alarm time will be counted as the actual amount of time taken by the owner or operator to initiate corrective actions. If inspection of the baghouse demonstrates that no corrective actions are necessary, no alarm time will be counted.

(ix) The owner or operator shall continuously record the output from the bag leak detection system.

* * * * *

[FR Doc. 99–3531 Filed 2–11–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260 and 261

[FRL–6233–5]

RIN 2070–AC72

Temporary Suspension of Toxicity Characteristic Rule for Specified Lead-Based Paint Debris

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA is extending the comment period on a proposed rule that would provide a temporary suspension of the toxicity characteristic rule for specified lead-based paint (LBP) debris. EPA has received a request for the extension of the comment period. To ensure that all parties have sufficient opportunity to submit their comments, the Agency will continue to accept comments until April 2, 1999.

DATES: The comment period is extended and comments are due on or before April 2, 1999.

ADDRESSES: Commenters must send an original and two copies of their comments to: Docket Clerk, Mail Code 5305W, Docket No. F–98–LDP–FFFFF, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Comments should include the docket number F–98–LPDP–FFFFF.

Hand deliveries of comments should be made to the RCRA Information Center (RIC), located at Crystal Gateway 1, First Floor, 1235 Jefferson Davis

Highway, Arlington, VA. Comments may also be submitted electronically through the Internet to: *rcra-docket@epamail.epa.gov*. Comments in electronic format should also be identified by the docket number F–98–LPDP–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special character and any encryption. Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted to RCRA CBI Document Control Officer, Office of Solid Waste (5305W), Environmental Protection Agency, 401 M street, S.W., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For general information about the proposed rule, contact the RCRA Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, Washington, DC 20460, (800)424–9346 (toll free); TDD (800) 553–7672 (hearing impaired); in Washington, DC metropolitan area the number is (703) 412–9810; TDD (703) 486–3323 (hearing impaired). For technical information on this proposed rule, contact Ms. Rajani D. Joglekar in the Office of Solid Waste at (703) 308–8806; and for technical information on the proposed TSCA Title IV disposal and management standards, contact: Tova Spector in the Office of Pollution Prevention and Toxics at (202) 260–3467. To obtain copies of the report or other materials referred to in this proposal, contact the RCRA Docket at the telephone number or address listed above.

SUPPLEMENTARY INFORMATION:

Background

In the **Federal Register** of December 18, 1998 (63 FR 70233), EPA published a proposed rule under Resource Conservation and Recovery Act (RCRA) to provide a temporary suspension of the toxicity characteristic (TC) rule for specified lead-based paint (LBP) debris. EPA proposed this temporary suspension of the TC rule for LBP debris under the authority of RCRA sections 1006(b)(2) and 2002(a). RCRA section 1006(b)(1) requires that the EPA integrate all provisions of RCRA for purposes of administration and enforcement and avoid duplication of environmental regulations provided that it is done in a manner consistent with the goals and policies expressed in RCRA and in the other acts referred to this section (42 U.S.C. 6905(b)(1)). Simultaneously with the temporary suspension of the TC for LBP debris, the Agency published a proposal under the Toxic Substances Control Act (TSCA) concerning disposal and management of LBP debris (63 FR 70190). In both documents, EPA provided a 60-day comment period and announced two public meetings. In response to requests by interested parties, EPA is extending the comment period by 45 days. Comments must now be received by April 2, 1999.

List of Subjects in 40 CFR Parts 260 and 261

Environmental protection, Hazardous substances, Lead-based paint, Lead poisoning, Reporting and recordkeeping requirements.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 99–3528 Filed 2–11–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[OPPTS–62160A; FRL–6061–2]

RIN 2070–AC72

Lead: Management and Disposal of Lead-Based Paint Debris; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA is extending the comment period on a proposed rule that would provide new standards for the management and disposal of lead-based paint (LBP) debris. EPA has received a request for the extension of the comment period to ensure that all parties have sufficient opportunity to submit their comments, the Agency will continue to accept comments until April 2, 1999.

DATES: Comments are due on or before April 2, 1999.

ADDRESSES: Each written comment must bear the docket control number OPPTS–62160A. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. G–099, East Tower, Washington, DC 20460.

Written comments and data may also be submitted electronically to: oppt.ncic@epa.gov. Follow the instructions in Unit II. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

All written comments which contain information claimed as CBI must be clearly marked as such. Three copies, sanitized of any comments containing information claimed as CBI, must also be submitted and will be placed in the public record for this rulemaking. Persons submitting information, any portion of which they believe is entitled to treatment as CBI by EPA, must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: *General information:* National Lead Information Center's Clearinghouse, 1–800–424–LEAD (5323). *For TSCA technical and policy questions*: Tova Spector, Office of Pollution Prevention and Toxics (7404), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 260–3467; e-mail address: spector.tova@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 18, 1998 (63 FR 70190) (FRL–5784–3), EPA published a proposed rule under sections 402 and 404 of the Toxic Substances Control Act (TSCA). Title IV of TSCA provides for new standards for the management and disposal of lead-based paint debris. Section 402 of TSCA (15 U.S.C. 2682) governing lead-based paint activities. Section 404 of TSCA (15 U.S.C. 2684) requires that any State that seeks to administer and enforce the requirements established by the Agency under section 402 of TSCA must submit to the Administrator a request for authorization of such a program. Simultaneously, EPA published a proposed rule suspending the toxicity characteristic for lead-based paint under the Resource Conservation and Recovery Act (RCRA) (63 FR 70232) (FRL–5783–7). In both documents, EPA provided a 60-day comment period and two public meetings. In response to requests by interested parties, EPA is extending the comment period by 45 days for the TSCA proposed rule. Comments must now be received by April 2, 1999. Elsewhere in today's **Federal Register**, EPA is extending the comment period for the proposed RCRA rule suspending the toxicity characteristic for lead-based paint.

Comments on that proposal must be received by April 2, 1999.

II. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number OPPTS–62160A (including comments and data submitted electronically as described in this unit). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC. Electronic comments can be sent directly to EPA at:

oppt.ncic@epa.gov.

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 disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPPTS–62160A. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

List of Subjects in 40 CFR Part 745

Environmental protection, Hazardous substances, Lead-based paint, Lead poisoning, Reporting and recordkeeping requirements.

Dated: February 4, 1999.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 99–3527 Filed 2–11–99; 8:45 am]

BILLING CODE 6560–50–F

Notices

Federal Register
Vol. 64, No. 29
Friday, February 12, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 8, 1999.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of management and Budget (OMB), Washington, D.C. 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: SMI Implementation Study Year 2 Data Collection.

OMB Control Number: 0584–0485.

Summary of Collection: The framework for implementation of the School Meals initiative for Healthy Children was initially proposed under the Healthy Meals Americans Act of 1994 (PL 103–448), enacted on November 2, 1994. The legislation was later amended under the Healthy Meals for Children Act of 1996 (PL 104–149), signed May 29, 1996. In 1993, the U.S. Department of Agriculture launched the most far-reaching reform of the school lunch program since it was established over a half century ago. The central purpose of the reform is to upgrade the nutritional content of school meals. The several activities that are now underway as part of this reform are collectively termed the ''School Meals Initiative (SMI).'' This second year study will collect and analyze information relating to implementation of the SMI and data gathered in a base year survey as well as to other issues pertaining to administration of the school-based child nutrition programs administered by the USDA. The Food and Nutrition Service (FNS) will collect information using a mail and telephone survey to evaluate the implementation of the USDA's School Meals Initiative.

Need and Use of the Information: FNS will collect information on how the regulation is being implemented at the SFA and State level so that program improvement can be made. FNS will examine how food service operations and activities are affected by the implementation of SMI and will examine the role the State Agency has played in assisting public SFAs in the selection and implementation of new menu planning systems. FNS will used the information in administering implementation of the School Meals Initiative and in performing its continuing oversight responsibilities. It will also be used by Child Nutrition Programs in the states.

Description of Respondents: Not for-profit institutions; State, Local, or Tribal Government.

Number of Respondents: 2,039.

Frequency of Responses: Reporting; Other (One-time).

Total Burden Hours: 2,014.

Nancy B. Sternberg,
Departmental Clearance Officer.

[FR Doc. 99–3451 Filed 2–11–99; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to EnerGenetics International, Inc., of Nauvoo, Illinois, an exclusive licenses to U.S. Patent No. 5,432,265 issued on July 11, 1995, entitled ''Process for the Continuous Removal of Products for High Pressure Systems.'' Notice of Availability was published in the **Federal Register** on September 24, 1993, for U.S. Patent No. 5,432,265.

DATES: Comments must be received on or before April 13, 1999.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as EnerGenetics International, Inc., has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty (60) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the

requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 99–3501 Filed 2–11–99; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Environmental Impact Statement Preparation for the Big Run Project, Allegheny National Forest, Elk County, PA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: In accordance with the National Environmental Policy Act, notice is hereby given that the Forest Service, Allegheny National Forest will prepare an Environmental Impact Statement to disclose the environmental consequences of the proposed Big Run Project.

The purpose of this project is to move from the Existing Condition towards the Desired Future Condition (DFC) as detailed in the Allegheny National Forest Land and Resource Management Plan (Forest Plan). The Forest Plan allocates land to management where wood production is one of the featured objectives (Management Area 3.0). The Big Run project is located entirely within this management area.

In order to move towards the DFC, the early successional age class (0–20 year age) needs to increase; healthy forested stands capable of producing high quality, high value sawtimber need to be maintained; and understories dominated by fern, grass or undesirable woody vegetation need to develop seedling vegetation. Project proposals include timber havesting as a means for making desired changes to forest vegetation and satisfying the demonstrated public need for wood products. Our proposed action to meet the purpose and need includes 410 acres of regeneration harvests to bring the onset of a new forest; herbicide, fertilizer, fencing, mechanical site preparation, and planting to ensure seedling establishment and growth in understories; and 476 acres of thinning in immature stands to reduce the competition for light and nutrients, thereby improving the health and vigor of residual trees. Associated with these silvicultural activities includes approximately one mile of new road construction, six miles of road restoration, 12 miles of road betterment, approximately one half mile of road obliteration, and additional stone pit development to provide an adequate long-term transportation system. Wildlife habitat improvement measures in the form of plantings, fish habitat improvements and stocking, and wood duck nest box placement serve to supplement the existing conditions.

After completion of the analysis, the responsible official will select an alternative that maximizes net public benefits for the Big Run Project area.

DATES: The public is asked to provide comments, suggestions, and recommendations for achieving the purpose and need for the Big Run Project. The public comment period will be for 30 days from the date the Environmental Protection Agency publishes this notice of availability in the **Federal Register**. Comments and suggestions should be submitted in writing and postmarked by March 9, 1999 to ensure timely consideration. To assist in commenting, a scoping letter providing more detailed information on the project proposal has been prepared and is available to interested parties.

FOR FURTHER INFORMATION CONTACT: Submit written comments and suggestions concerning the proposed action to: ''Big Run Project'', attention Mary Schoeppel—ID Team Leader, Marienville Ranger District, HC2 Box 130, Marienville, PA 16239. For further information, contact Mary Schoeppel@(814) 927–6628.

SUPPLEMENTARY INFORMATION: The issue of uneven-aged management often arises during the scoping process for projects such as this. We will therefore include at least one alternative to the Proposed Action which will evaluate the effects of applying uneven-aged management techniques. Issues which are generated through the scoping process may generate additional alternatives.

Comments considered beyond the scope of this project and which will *not* be evaluated include whether or not commercial timber harvest should occur on National Forest System lands; the validity of the science of silviculture and forest management; and whether or not to allow the use of herbicides on the Allegheny National Forest on a programmatic level.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. In a recent legal opinion, the Forest Service's Office of General Council (OGC) has determined that names and addresses of people who respond to a Forest Service solicitation are not protected by the Privacy Act and can be released to the public. The Forest Service routinely gives notice of and requests comments on proposed land and resource management actions accompanied by environmental documents, as well as on proposed rules and policies. Comments received in response to such solicitations, including names and addresses of those who comment, will be considered part of the public record and will be available for such inspection, upon request. Any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. The opinion states that such confidentiality may be granted in only very limited circumstances, such as to protect trade secrets.

The Draft EIS is expected to be filed with the Environmental Protection Agency and to be available for public review during June of 1999. At that time, the Environmental Protection Agency (EPA) will publish in the **Federal Register** a notice of availability of the draft environmental impact statement. The comment period on the draft will be 45 days from the date the EPA notice appears in the **Federal Register.**

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 proposals so that it is meaningful and alerts an agency to the reviewers position and contentions, Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage may be waived if not raised until after completion of the full environmental impact statement, City of Angoon v. Hodel, 803 F.2d 1016, 1022 (9th Cir. 1988), 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.

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 CEQ Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points). After the comment period ends on the draft environmental impact statement, the comments received will be analyzed and considered by the Forest Service in preparing the final environmental impact statement.

The final environmental impact statement is scheduled to be completed in October, 1999. In the final EIS, the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the environmental impact statement, and applicable laws, regulations and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in a Record of Decision. That decision will be subject to appeal under 36 CFR part 215.

The responsible official is Leon Blashock, District Ranger, Allegheny National Forest, HC2 Box 130, Marienville, PA 16239.

Dated: February 2, 1999.

Leon Blashock,

District Ranger.

[FR Doc. 99–3447 Filed 2–11–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Trout Slope East Timber Project; Ashley National Forest, Uintah County, UT

AGENCY: Forest Service, DOA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Ashley National Forest has proposed to harvest live and dead timber within the Trout Slope East area of the Vernal Ranger District. After completing an environmental assessment (EA), the Responsible Official, Forest Supervisor Bert Kulesza, has determined this proposal will be a major federal action which *may* affect the quality of the human environment, requiring the preparation of an EIS (Environmental Impact Statement).

The objectives of the project are to improve ecosystem function by improving forest structure and pattern characteristics. Treatments are proposed that will recover wood products, reduce fuel loads, salvage the dead tree component to prevent a likely future forest condition of blown down and jackstrawed timber, improve long term scenic quality along primary access routes and at popular recreation sites while protecting the integrity of the productive land base.

DATES: To be most useful, comments concerning the scope of the analysis should be received in writing by March 15, 1999.

ADDRESSES: Written comments and questions should be sent to: Brad Exton, District Ranger, Vernal Ranger District, Ashley National Forest, 355 N. Vernal Avenue, Vernal, Utah 84078, or e-mail at bexton/r4__ashley@fs.fed.us.

FOR FURTHER INFORMATION CONTACT: Specific questions about the proposed project and analysis should be directed to Greg Clark, ID Team Leader, Vernal Ranger District, 355 N. Vernal Ave., Vernal, Utah, (435) 789–1181.

SUPPLEMENTARY INFORMATION: This proposal arose out of the Vernal Ranger District's Trout Slope Landscape Assessment (1996) which described the existing condition of an 80,000 acre area between East Park and Leidy Peak. The assessment suggested a desired condition for the area, and recommended resource management strategies to move the area toward the desired condition as a more area-specific complement to the broad direction of the Ashley National Forest Land and Resource Management Plan (1986).

The Trout Slope East analysis area is approximately 18,650 acres and lies between East Park and Oaks Park reservoirs and extends to the divide of this part of the eastern Uinta Mountains.

The project area begins about six miles from Highway 191 on the East Park Highway. There are over 38 miles of system roads and numerous miles of non-system roads which provide access into the area. Approximately 20 miles have been gated (five gates) to secure big game habitat and provide non-motorized recreation. Access would be provided by controlled access of gated road systems, opening some existing roads and by possible construction of temporary roads. After harvest, opened roads would be closed and temporary roads obliterated.

The proposed action was developed during the initial environmental analysis and documented in the Trout Slope East Timber EA released for public comment in spring, 1998. For continuity, this alternative will be carried through this analysis as the proposed action. However, based on the comments we received on the EA, we have developed two additional alternatives in order to respond to some of the issues raised. These are summarized briefly below.

Proposed Action (Alternative 1): Harvest from existing roads and construct short segments of temporary roads. This alternative would better access some treatment areas and reduce skidding distances.

- Dead-only salvage on approximately 2,600 acres for approximately 15 million board feet (MMBF) and overstory removal or clearcut 475 acres of leave strips for approximately 4 MMBF.
- Dead-only salvage on approximately 850 acres for 5 MMBF to improve the East Park Campground viewshed.
- Approximately 18 miles of temporary road would be constructed.
- Approximately 26 miles of existing roads would be opened to access all harvest units. In general, a minimal amount of work is needed to make these roads serviceable for hauling.
- A ford crossing would be replaced with a temporary bridge on a [West Fork] tributary of Little Brush Creek in the Round Park area.
- Timber stand improvement including precommercial thinning of overstocked sapling stands would occur within the project area. There are approximately 500 acres of sapling stands in the project area scheduled for surveys and possible thinning within the next five years. In addition, stands in this proposed action would be evaluated after treatment for further work in the remaining seedling/sapling understory.

The proposed timber management actions are based on the following:

The timber resource in this area is primarily even-aged lodgepole pine with small pockets of uneven-aged mixtures of lodgepole pine, Engelmann spruce, Douglas-fir, subalpine fir and aspen. The lodgepole pine stands are comprised of about 70% to 90% dead trees due to a mountain pine beetle epidemic in the late 1970s to early 1980s. Currently, the landscape looks gray with stands or strips of timber containing dead trees surrounding 10 to 40 acre seedling or sapling stands (regenerated clearcuts).

The project area was selected from the Trout Slope Assessment area by using existing stand level data, areas with existing roads and areas with primarily dead lodgepole pine. Environmental conditions considered were sensitive soils, geologic hazard zones, riparian

zones, timber stand patch size and arrangement in relation to wildlife use, slopes suitable for tractor logging, level and type of recreation use, forest cover type and vegetative structure stage. The existing condition based on the calculated vegetative structure stage (VSS) by site was compared to a possible desired future condition from the Trout Slope Landscape Assessment.

Strips of (mostly dead) trees left between some of the previously harvested areas are too narrow to function as forest cover habitat for certain wildlife species. In many of these same stands the amount of dead trees is so great that the current stand structure stage will not continue to exist much longer. Overstory removal of the dead and diseased trees in these strips would create a mosaic of larger stands of seedling to sapling sized trees. These stands as they grow would, in the long term, provide interior forest habitat for certain wildlife species.

In other locations where past harvest hasn't occurred, only dead trees would be removed, leaving a less dense but more green appearing forest and lower fuel loads.

Maintenance of the remaining live green stands, especially those with a mature component, is needed to provide forest cover in a landscape primarily consisting of seedling/sapling stands and dead trees until young stands grow to function as live mature forest. In selected live stands, removal of individual live and dead trees is expected to improve stand vigor and longevity.

Two other action alternatives have been developed thus far based on resource issues (documented in the previously mentioned EA), in response to public comment on the EA and in consideration of the pending development of a new Forest Service roads policy. These alternatives defer some harvest activity and drop some treatment areas included in the proposed action. One of these alternatives emphasizes harvest from the existing road system only, using longer skidding distances and alternate skidding patterns to access treatment areas.

Public Involvement

Comments received and issues which were raised during the development of the Trout Slope East EA will be carried forward and considered in this EIS. Additional comments are encouraged. Public participation is especially important at several points during the analysis, particularly during initial scoping and review of the draft EIS. Individuals, organizations, federal, state, and local agencies who are interested in or affected by the decision are invited to participate in the scoping process. This information will be used in the preparation of the draft EIS.

Formal scoping begins upon publication of this notice and will include mailing of information to known interested parties.

The second major opportunity for public input is the draft EIS. The draft EIS is expected to be filed with the EPA (Environmental Protection Agency) and to be available for public review in April of 1999. At that time the EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (Reviewers may wish to refer to the *Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act* at 40 CFR 1503.3 in addressing these points).

The Forest Service believes it is important to give reviewers notice at this early stage of several federal court decisions 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, 533 (1978). Second, environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel*, (9th Circuit, 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 EIS.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS.

Dated: February 1, 1999.

Bert Kulesza,

Forest Supervisor.

[FR Doc. 99–3322 Filed 2–11–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed Middle Little Salmon Watershed Projects, Payette National Forest, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) for the proposed Middle Little Salmon Watershed Projects, New Meadows Ranger District, Payette National Forest, Idaho. The proposed action would harvest timber, obliterate roads to reduce sediment, close other roads to reduce wildlife vulnerability, control noxious weeds, and adjust a Forest Service-private land boundary fence. A range of alternatives, including the no action alternative, will be developed as appropriate to address issues.

The agency invites comments and suggestions on the scope of the analysis to be included in the draft environmental impact statement (DEIS). In addition, the agency gives notice of the full environmental analysis and decision making process that is beginning on the proposal so that interested and affected people know how they may participate and contribute to the final decision.

DATES: Comments on the scope of the analysis must be received by February 13, 1999.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Doug Havlina, Middle Little Salmon, Watershed Projects Team Leader, New Meadows Ranger District, Payette National Forest, PO Box J, New Meadows, Idaho 83654.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action should be directed to Doug Havlina, phone (208) 347–0300.

SUPPLEMENTARY INFORMATION: The Payette National Forest Plan (1988) provides forest-wide direction for management of the resources of the Payette National Forest, including timber. The environmental impact statement for the Forest Plan (1988) analyzed a range of alternatives for management of the Middle Little Salmon and Mud Creek watersheds. The

Plan allocated this area to general forest, including timber management and assigned it to Management Area #11. The area has had previous entries for timber harvest.

As well as forest-wide direction, the plan gives specific direction for this management area. It requires integrated protection of multiple resources including fish, wildlife, range, soil and water, timber, and fire/fuels.

Public participation will be especially important at several points during the analysis, particularly during scoping of issues and review of the DEIS. The first opportunity in the process is scoping.

The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in detail.
3. Eliminating insignificant issues or those covered by a relevant previous environmental analysis.
4. Determining potential cooperating agencies and responsibilities.

The Forest Service will consult with the National Marine Fisheries Service, Department of Commerce, and the U.S. Fish and Wildlife Service, Department of Interior, on potential impacts on threatened and endangered species.

Preliminary issues include effects on fisheries, wildlife, recreation, water quality, and economics.

The second major opportunity for public input is with the DEIS. The DEIS will analyze a range of alternatives to the proposed action, including the no-action alternative. The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in July, 1999. EPA will then publish a notice of availability of the DEIS in the **Federal Register**. Public comments are invited at that time.

The comment period on the DEIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 533 (1978). Also environmental objections that could be raised at the DEIS stage but that are not raised until after completion of the final environmental impact statement (FEIS) 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 the 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 FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS 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 DEIS 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.

In the FEIS the Forest Service is required to respond to comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies in making the final decision regarding this proposal. The responsible official will document the decision and reasons for it in the Record of Decision. That decision will be subject to appeal under 36 CFR 215.

David F. Alexander, Forest Supervisor of the Payette National Forest, McCall, Idaho, is the responsible official for this EIS.

Dated: February 4, 1999.

David F. Alexander,

Forest Supervisor.

[FR Doc. 99–3450 Filed 2–11–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Washington Cascades Provincial Advisory Committee and Yakima Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eastern Washington Cascades Provincial Advisory Committee and Yakima Provincial Advisory Committee will meet on Friday, February 26, 1999, at the Wenatchee National Forest headquarters conference room, 215 Melody Lane, Wenatchee, Washington. The meeting will begin at 9:00 a.m. and continue until 3:30 p.m. The first part of the meeting will be devoted to subcommittee proposals for a Methow Valley dry forest management proposal, and the remainder of the day will be dedicated to presentations on listing of fish species under the Endangered Species Act. All Eastern Washington Cascades and Yakima Provincial Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, 509–662–4335.

Dated: February 3, 1999.

Sonny J. O'Neal,

Forest Supervisor, Wenatchee National Forest.

[FR Doc. 99–3503 Filed 2–11–99; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletion from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a service previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: March 15, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Base Supply Center, Fort Lewis, Washington
NPA: The Lighthouse for the Blind, Inc., Seattle, Washington
Grounds Maintenance, The John F. Kennedy Center for the Performing Arts, 2700 F Street, NW, Washington, DC
NPA: Melwood Horticultural Center, Inc., Upper Marlboro, Maryland
Janitorial/Custodial, Naval Reserve Center, 85 Sea Street, Quincy, Massachusetts
NPA: Community Workshops, Inc., Boston, Massachusetts
Janitorial/Grounds Maintenance, U.S. Courthouse and IRS Federal Complex, 99 First Avenue, Beckley, West Virginia
NPA: Wyoming County Workshop, Inc., Maben, West Virginia
Mailroom Operation, Federal Bureau of Investigation (FBI) Headquarters, J. Edgar Hoover (JEH), 935 Pennsylvania Avenue, NW, Washington, DC
NPA: Didlake, Inc., Manassas, Virginia
Switchboard Operation, MacDill Air Force Base, Florida
NPA: Tampa Lighthouse for the Blind, Tampa, Florida

Deletion

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for deletion from the Procurement List.

The following service has been proposed for deletion from the Procurement List:

Mailing Service, Headquarters, Air Force Military Personnel Center, Randolph Air Force Base, Texas

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 99–3548 Filed 2–11–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: March 15, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On November 26 and December 28, 1998, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (63 FR 63670 and 71446) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

U.S. Navy Personal Financial Record
7530–00–NIB–0420
Jacket No. 605–913

Skirt, Female Service, Dress Blue, CG
8410–01–452–3387
8410–01–452–3388
8410–01–452–3389
8410–01–452–3390
8410–01–452–3391
8410–01–452–3394
8410–01–452–3395
8410–01–452–3396
8410–01–452–3397
8410–01–452–3398
8410–01–452–3399
8410–01–452–3400
8410–01–452–3402
8410–01–452–3404
8410–01–452–3653
8410–01–452–3654
8410–01–452–3655
8410–01–452–3656
8410–01–452–3657
8410–01–452–3658
8410–01–452–3659
8410–01–452–3660
8410–01–452–3661
8410–01–452–3662
8410–01–452–3663
8410–01–452–3664
8410–01–452–3665
8410–01–452–3666
8410–01–452–3667
8410–01–452–3668

8410–01–452–3669
8410–01–452–3670
8410–01–452–3671
8410–01–452–3672
8410–01–452–3673
8410–01–452–3674
8410–01–452–3675
8410–01–452–3676
8410–01–452–3677
8410–01–452–3678
8410–01–452–3679
8410–01–452–3680
8410–01–452–3681
8410–01–452–3682
8410–01–452–6191
8410–01–452–6195
8410–01–452–6197
8410–01–452–3393

PVA Mop
M.R. 1027

Services

Base Supply Center, Fort Carson, Colorado
Janitorial/Custodial, U.S. Army Reserve Center, Fort Dix, New Jersey
Janitorial/Custodial, VA Community Based Outpatient Clinic 382 South Bluff Street, 2nd Floor, St. George, Utah

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities.

3. The action may result in authorizing small entities to furnish the commodities.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Box, Filing
7520–00–139–3743
7520–00–240–4830

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 99–3549 Filed 2–11–99; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–824]

Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Extension of Time Limit for Final Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for the final results of the review of certain corrosion-resistant carbon steel flat products from Japan. This review covers the period August 1, 1996 through July 31, 1997. The preliminary results of this review notice was published in the **Federal Register** on September 8, 1998 (63 FR 47465). The final results of this review was previously extended 30 days. The *Extension of Time Limit for Final Results* was published in the **Federal Register** on January 13, 1999 (64 FR 2192).

EFFECTIVE DATE: February 12, 1999.

FOR FURTHER INFORMATION CONTACT: Doreen Chen or Rick Johnson at (202) 482–0408 or (202) 482–3818, respectively; Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 (''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.

Extension of Final Results

The Department has determined that it is not practicable to issue its final results by the due date of February 5, 1999. The Department is therefore extending the time limit for completion of the final results by an additional 30 days, until March 8, 1999, in accordance with Section 751(a)(3)(A) of the Act. *See* Decision Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary, Enforcement Group III to Robert LaRussa, Assistant Secretary for Import Administration, February 5, 1999.

Dated: Febuary 5, 1999.

Joseph A. Spetrini,

Deputy Assistant Secretary for Enforcement Group III.

[FR Doc. 99–3545 Filed 2–11–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

[A–122–823]

Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation of Order (in Part)

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of changed circumstances antidumping duty administrative review, and revocation in part of antidumping duty order.

SUMMARY: On August 19, 1993, the Department of Commerce (the Department) published an antidumping duty order on certain cut-to-length carbon steel plate from Canada. On December 28, 1998, the Department simultaneously initiated a changed circumstances antidumping duty administrative review and issued the preliminary results of this review expressing an intent to revoke the order in part. We are now revoking this order in part, with regard to certain cut-to-length carbon steel plate free of cobalt-60 and other radioactive nuclides, based on the fact that domestic parties (petitioners in the underlying proceeding [1]) have expressed no interest in the importation or sale of cobalt-60-free cut-to-length carbon steel plate produced in Canada as described in the ''Scope of Review'' section below.

EFFECTIVE DATE: February 12, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley (202–482–4106) or Maureen Flannery (202–482–3020), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230.

[1] The petitioners are: Bethlehem Steel Corporation, U.S. Steel Group (a unit of USX Corporation), Inland Steel Industries, Inc., Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, Geneva Steel, and Lukens Steel Company.

The Applicable Statute and Regulations: Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments to the Tariff Act of 1930 (the Act) by the Uruguay Rounds Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR Part 351 (April 1998).

SUPPLEMENTARY INFORMATION:

Background

In response to a request by Canberra Industries, Inc., (Canberra) that the Department conduct a changed circumstances administrative review to determine whether to revoke in part the order with regard to certain cobalt-60-free cut-to-length carbon steel plate, on December 4, 1998, the petitioners informed the Department in writing that they did not object to the changed circumstances review and had no interest in the importation or sale of cobalt-60-free cut-to-length carbon steel plate produced in Canada as described in the ''Scope of Review'' section below. The Department has previously revoked from the order a similar cobalt-60-free cut-to-length carbon steel plate product, also per Canberra's request. See, *Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order* 61 FR 7471 (Feb. 28, 1996).

We preliminarily determined that petitioners' affirmative statement of no interest constitutes good cause for conducting a changed circumstances review and for partially revoking the order. Consequently, on January 6, 1999, the Department published a notice of initiation, preliminary results of review, and intent to revoke order in part (64 FR 846). This determination did not affect the order with regard to other cut-to-length carbon steel plate. We gave interested parties an opportunity to comment on the preliminary results of this changed circumstances review. We received no comments.

Scope of Review

The merchandise covered by this changed circumstance review includes cut-to-length carbon steel plate meeting the following criteria: (1) 100% dry steel plates, virgin steel, no scrap content (free of cobalt-60 and other radioactive nuclides); (2) .300 inches maximum thickness, plus 0.0, minus .030 inches; (3) 48.00 inches wide, minimum; (4) 20 foot lengths; (5) flatness, plus/minus 0.5 inches over 10 feet; (6) AISI 1006; (7) tension leveled; (8) pickled and oiled; and (9) carbon content, .03 to .08 (max). This merchandise is currently classified under subheading HTS 7208.52.0000. HTS numbers are provided for convenience and customs purposes. The written description of the scope of this review remains dispositive.

This changed circumstances administrative review covers all manufacturers/exporters of cobalt-60-free cut-to-length carbon steel plate from Canada.

Final Results of Review; Partial Revocation of Antidumping Duty Order

The petitioners' affirmative statement of no interest in this case constitutes changed circumstances sufficient to warrant partial revocation of this order. See 782(h) of the Act; 19 CFR 351.222(g)(1)(i). Therefore, the Department is partially revoking this order on certain cobalt-60-free cut-to-length carbon steel plate from Canada, described above, in accordance with section 751(b)(1) of the Act.

The Department will, in accordance with 19 CFR 351.222(g)(4), instruct the U.S. Customs Service to proceed with liquidation, without regard to antidumping duties, of all unliquidated entries of cobalt-60-free cut-to-length carbon steel plate from Canada with the specifications described above not subject to final results of an administrative review, and to refund with interest any estimated antidumping duties collected with respect to such entries.

This changed circumstances administrative review, partial revocation of the antidumping duty order, and notice are in accordance with sections 751(b)(1) and 782(h) of the Act and sections 351.216, 351.221(c)(3), and 351.222(g) of the Department's regulations.

Dated: February 3, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–3547 Filed 2–11–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–815]

Notice of Extension of Time Limit for Antidumping Duty Administrative Review of Sulfanilic Acid From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 12, 1999.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the antidumping duty administrative review of the antidumping order on sulfanilic acid from the People's Republic of China, covering the period August 1, 1997 through July 31, 1998.

FOR FURTHER INFORMATION CONTACT: Doug Campau. LaVonne Jackson, or Nithya Nagarajan, AD/CVD Enforcement Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–3964, (202) 482–0961, or (202) 482–4243, respectively.

SUPPLEMENTARY INFORMATION: Under section 751(a)(3)(A) of the Tariff Act, as amended (the Act), the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days after the last day of the anniversary month for the relevant order. In the instant case, the Department has determined that it is not practicable to complete the review within the statutory time limit. *See* Memorandum from Joseph A. Spetrini to Robert S. LaRussa (February 3, 1999). Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for the preliminary results until July 2, 1999.

Dated: February 3, 1999.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 99–3546 Filed 2–11–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020899F]

Marine Fisheries Advisory Committee; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: Notice is hereby given of meetings of the Marine Fisheries Advisory Committee (MAFAC) from March 23 to 24, 1999.

DATES: The meetings are scheduled as follows:

1. March 23, 1999, 8:00 a.m. - 5:00 p.m.
2. March 24, 1999, 8:00 a.m. - 3:00 p.m.

ADDRESSES: The meetings will be held at the Southwest Fisheries Science Center, NOAA, National Marine Fisheries Service, 8604 La Jolla Shores Drive, La Jolla, CA. Requests for special accommodations may be directed to MAFAC, Office of Operations, Management and Information, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lu Cano, Executive Secretary; telephone:(301) 713–2252.

SUPPLEMENTARY INFORMATION: As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), notice is hereby given of meetings of MAFAC and MAFAC Subcommittees. MAFAC was established by the Secretary of Commerce (Secretary) on February 17, 1971, to advise the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. This Committee ensures that the living marine resource policies and programs of the Nation are adequate to meet the needs of commercial and recreational fisheries, and of environmental, state, consumer, academic, and other national interests.

Matters to Be Considered

March 23, 1999

Legislative, Budget, Vessel Monitoring Systems, Multi-Disciplinary Science, Fisheries Overcapacity, and Budget and Legislative Committee Reports/Updates and Recommendations

March 24, 1999

Vessel Monitoring Systems Report/Recommendations, Marine Reserves Report/Recommendations, Fisheries Overcapacity Report/Recommendations, and Steering Committee Report/Recommendations.

Time will be set aside for public comment on agenda items.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to MAFAC (see **ADDRESSES**).

Dated: February 8, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator, National Marine Fisheries Service.

[FR Doc. 99–3538 Filed 2–11–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0056]

Submission for OMB Review; Comment Request Entitled Report of Shipment

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Report of Shipment. A request for public comments was published at 63 FR 67673, December 8, 1998. No comments were received.

DATES: Comments may be submitted on or before March 15, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Streets, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

Military (and, as required, civilian agency) storage and distribution points, depots, and other receiving activities require advance notice of large shipments enroute from contractors' plants. Timely receipt of notices by the consignee transportation office precludes the incurring of demurrage and vehicle detention charges. The information is used to alert the receiving activity of the arrival of a large shipment.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *10* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *250*; responses per respondent, *4*; total annual responses, 1,000; preparation hours per response, *.167*; and total response burden hours, *167*.

Obtaining Copies of Proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0056, Report of Shipment, in all correspondence.

Dated: February 9, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–3498 Filed 2–11–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0059]

Submission for OMB Review; Comment Request Entitled North Carolina Sales Tax Certification

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning North Carolina Sales Tax Certification. A request for public comments was published at 63 FR 67673, December 8, 1998. No comments were received.

DATES: Comments may be submitted on or before March 15, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Streets, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Victoria Moss, Federal Acquisition Policy Division, GSA (202) 501–4764.

SUPPLEMENTARY INFORMATION:

A. Purpose

The North Carolina Sales and Use Tax Act authorizes counties and incorporated cities and towns to obtain each year from the Commissioner of Revenue of the State of North Carolina a refund of sales and use taxes indirectly paid on building materials, supplies, fixtures, and equipment that become a part of or are annexed to any building or structure in North Carolina. However, to substantiate a refund claim for sales or use taxes paid on purchases of building materials, supplies, fixtures, or equipment by a contractor, the Government must secure from the contractor certified statements setting forth the cost of the property purchased from each vendor and the amount of sales or use taxes paid. Similar certified statements by subcontractors must be obtained by the general contractor and furnished to the Government. The information is used as evidence to establish exemption from State and local taxes.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *10* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *424*; responses per respondent, *1*; total annual responses, *424*; preparation hours per response, *.17*; and total response burden hours, *72*.

Obtaining Copies of Proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0059, North Carolina Sales Tax Certification, in all correspondence.

Dated: February 9, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–3499 Filed 2–11–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing

ACTION: Notice.

Pursuant to Public Law 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8:30 a.m. to 4:30 p.m. on March 25, 1999, and from 8:30 a.m. to 4:30 p.m. on March 26, 1999. The meeting will be held at The Tremont Hotel, 100 East Chestnut Street, Chicago, Illinois 60611. The purpose of the meeting is to review planned changes and progress in developing paper-and-pencil and computerized enlistment tests and renorming of the tests. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Assistant Secretary of Defense (Force Management Policy), Room 2B271, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9271, no later than February 22, 1999.

Dated: February 8, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–3440 Filed 2–11–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Programmatic Environmental Impact Statement (DPEIS) for Phase 2 of the San Luis Obispo Creek Watershed Management Plan, in San Luis Obispo County, CA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA) as implemented by the regulations of the Council on Environmental Quality (CEQ), 40 CFR 1500–1508, the Corps of Engineers announces its intent to prepare a Draft Programmatic Environmental Impact Statement (DPEIS) to address overall stream corridor management throughout the San Luis Obispo Creek watershed, including development of hydrologic and hydraulic models, flood management, sediment management and riparian restoration, based on comprehensive inventories and analysis, and will develop/update design criteria handbooks and maintenance manuals. To eliminate duplication of paperwork, the Corps of Engineers intends on preparing a joint DPEIS and Draft Environmental Impact Report (DEIR) pursuant to the California Environmental Quality Act prepared by the City and/or County of San Luis Obispo per 40 CFR1560.2 and 1506,4.

FOR FURTHER INFORMATION CONTACT: Any questions regarding the proposed action and/or issuance of the DPEIS may be directed to: Ms. Tiffany Welch, (805) 641–2935, Regulatory Branch, U.S. Army Corps of Engineers, 2151 Alessandro Drive, Suite 255, Ventura, California 93001 (email: twelch@spl.usace.army.mil).

SUPPLEMENTARY INFORMATION:

1. *Background*. In May 1998, the City of San Luis Obispo (City) completed Phase 1 of the San Luis Obispo Creek Management Plan which studied six stream reaches of San Luis Obispo (SLO) Creek, and sections of Stenner and Prefumo creeks. This document addressed immediate management needs within the defined study area. These included several bank repair projects and two sediment removal projects. In December 1998, the City completed bank repairs at Hayward Lumber, RRM, Gold's Gym, Pistol Range, Mariposa, and the wastewater treatment plant.

2. *Proposed Action*. Phase 2 will address overall stream corridor

management throughout the San Luis Obispo Creek watershed, including development of hydrologic and hydraulic models, flood management, sediment management and riparian restoration, based on comprehensive inventories and analysis, and will develop/update design criteria handbooks and maintenance manuals.

3. *Scope of Analysis.* Phase 2 will study:

—the remaining creeks and portions of creeks not covered in the Phase 1 work within the City limits of the City of San Luis Obispo;
—Acacia Creek and tributaries from East Fork of SLO Creek to Orcutt Road;
—East Fork of SLO Creek to State Route 227;
—Prefumo Creek to a point where Prefumo Creek Road deviates from the creek alignment;
—See Canyon Creek from SLO Creek to a point where See Canyon Road deviates from the creek alignment;
—Stenner Creek from the City limits to a point adjacent to the City reservoir where the County maintained road ends; and
—SLO Creek from the Pacific Ocean to a point where the Stage Coach Road above State Route 101 deviates from the creek alignment.

4. *Scoping Process.*

a. Federal, State, and local agencies and other interested private citizens and organizations are encouraged to send their written comments to Ms. Tiffany Welch at the address provided above. This scoping comment period will expire 30 days from the date of this notice.

b. Significant issues to be analyzed in depth in the DPEIS include biological resources, surface and ground water quality, erosion/sedimentation, aesthetics and socioeconomics.

c. Coordination will be undertaken with the U.S. Environmental Protection Agency, National Marine Fisheries Service, U.S. Fish and Wildlife Service, California Department of Fish and Game, California Regional Water Quality Control Board, and the California Coastal Commission.

5. *Scoping Meetings.* A scoping meeting will be held on Monday, March 8, 1999, from 6:15–8:15 p.m., to assess preliminary issues that should be addressed in the Plan. The scoping meeting will be held at City Hall, Council Chambers, 990 Palm Street, in the City of San Luis Obispo. Participation in the scoping meeting by Federal, state, and local agencies, and other interested private citizens and organizations is encouraged.

6. *DPEIS Schedule.* The current schedule estimates that the DEIS will be available for public review and comment in December 1999.

Dated: January 22, 1999.

John P. Carroll,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 99–3492 Filed 2–11–99; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF DEFENSE

Department of the Army Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Small Boat Harbor at Tatitlek, Alaska

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: NOI correction.

SUMMARY: In previous **Federal Register** notice (Vol 63, No. 187, pages 51567–51568) Monday, September 28, 1998, make the following correction:

On page 51568, in column one, line 56, the sentence ''The estimated date for a DEIS is February 15, 1999.'' should be deleted. Unfortunately, the DEIS will not be ready for publication until approximately November 1999 because of the additional field investigations to be conducted during the summer.

FOR FURTHER INFORMATION CONTACT: Lizette Boyer (907) 753–2637. Alaska District, Corps of Engineers, Environmental Resources Section (CEPOA–EN–CW–ER), P.O. Box 898, Anchorage, Alaska 99506–0898.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–3491 Filed 2–11–99; 8:45 am]

BILLING CODE 3710–NL–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Coastal Engineering Research Board (CERB); Meeting

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Coastal Engineering Research Board (CERB)

Dates of Meeting: March 23–25, 1999

Place: Ramada Inn, Kill Devil Hills, North Carolina

Time: 8:30 a.m. to 5:30 p.m. (March 23, 1999); 8:30 a.m. to 5 p.m. (March 24, 1999); 8:30 a.m. to 12 p.m. (March 25, 1999).

FOR FURTHER INFORMATION CONTACT: Inquires and notice of intent to attend the meeting may be addressed to Colonel Robin R. Cababa, Executive Secretary, Coastal Engineering Research Board, U.S. Army Engineer Research and Development Center, 3909 Halls Ferry Road, Vicksburg, Mississippi 39180–6199.

SUPPLEMENTARY INFORMATION: *Proposed Agenda:* The 2000 Coastal Engineering Program Review is to be held March 23–25, 1999. On Tuesday, March 23, a review of the Coastal Program work units concerning coastal navigation hydrodynamics, coastal sedimentation and dredging, and coastal structure evaluation and design will be presented. On Wednesday, March 24, proposed work units will be discussed, as well as work units in the Coastal Field Data Collection Program and the Coastal Inlet Research Program. On Thursday, March 25, 1999, a discussion of work units in the Coastal Inlet Research Program will continue.

This meeting is open to the public, but since seating capacity of the meeting room is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements for those wishing to attend.

Robin R. Cababa,

Colonel, Corps of Engineers, Executive Secretary.

[FR Doc. 99–3493 Filed 2–17–99; 8:45 am]

BILLING CODE 3710–PU–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has

been requested by March 1, 1999. The regular collection will be submitted through the discretionary streamlined process (1890–0001). Interested persons are invited to submit comments on or before March 15, 1999.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503. Comments regarding the regular clearance and requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Pat Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: February 8, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: Congressional Priorities for Postsecondary Education.

Abstract: To implement Congressional intent that $9.5 million of the funds appropriated for Title VII, Part B of the Higher Education Act be used to conduct a grant competition limited to specific Congressionally determined priorities.

Additional Information: This is a new program. Fourteen absolute priority areas were identified by Congress. Funding will address these requirements.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't; SEAs or LEAs.

Reporting and Recordkeeping Burden:
Responses: 500.
Burden Hours: 10,600.

[FR Doc. 99–3458 Filed 2–11–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 15, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Pat Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: February 8, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: Research on Charter School Finances.

Frequency: On occasion.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 693.

Burden Hours: 671.

Abstract: This two-year study explores how state and district policies, as well as charter school practices, affect charter schools' cost-effectiveness and quality. Funding equity and adequacy are assessed. This study proposes to inform policymakers at the federal, state, and local level of the precise effects of varied approaches to charter school finance.

[FR Doc. 99–3459 Filed 2–11–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. PP–197]

Notice of Intent To Prepare an Environmental Impact Statement and To Conduct Public Scoping Meetings and Notice of Floodplain and Wetlands Involvement; Public Service Company of New Mexico

AGENCY: Department of Energy (DOE).

ACTION: Notice of intent to prepare an environmental impact statement and to conduct public scoping meetings.

SUMMARY: Public Service Company of New Mexico (PNM) has applied to the Department of Energy (DOE) for a Presidential permit to construct two transmission lines originating at the switchyard of the Palo Verde Nuclear Generating Station (PVNGS) near Phoenix, Arizona, and extending approximately 160 miles to the south along one of three alternative routes, where they would cross the United States (U.S.) border with Mexico in the vicinity of Nogales, Arizona. South of the border, the lines would extend approximately 60 miles into Mexico and terminate at an existing substation located in the City of Santa Ana, in the Mexican State of Sonora. The proposed transmission lines may be either alternating current (AC) or direct current (DC). DOE has determined that the issuance of the Presidential permit would constitute a major Federal action that may have a significant impact upon the environment within the meaning of the National Environmental Policy Act of 1969 (NEPA). For this reason, DOE intends to prepare an environmental impact statement (EIS) to address reasonably foreseeable impacts from the proposed action and reasonable alternatives.

The purpose of this Notice of Intent is to inform the public about the proposed action, announce the plans for six public scoping meetings in the vicinity of the proposed transmission lines, invite public participation in the scoping process, and solicit public comments for consideration in establishing the scope and content of the EIS. Because the proposed project may involve an action in floodplains or wetlands, the EIS will include a floodplains and wetlands assessment and floodplains statement of findings in accordance with DOE regulations for compliance with floodplains and wetlands environmental review requirements (10 CFR Part 1022).

DATES: DOE invites interested agencies, organizations, and members of the public to submit comments or suggestions to assist in identifying significant environmental issues and in determining the appropriate scope of the EIS. The public scoping period starts with the publication of this Notice in the **Federal Register** and will continue until March 15, 1999. Written and oral comments will be given equal weight, and DOE will consider all comments received or postmarked by March 15, 1999, in defining the scope of this EIS. Comments received or postmarked after that date will be considered to the extent practicable.

Dates for the public scoping meetings are:

1. March 8, 1999, 2:00 p.m. to 4:00 p.m., Nogales, Arizona
2. March 8, 1999, 7:00 p.m. to 9:00 p.m., Tucson, Arizona
3. March 9, 1999, 2:00 to 4:00 p.m., Sells, Arizona
4. March 9, 1999, 7:00 to 9:00 p.m., Ajo, Arizona
5. March 10, 1999, 10:00 a.m. to 12:00 p.m., Gila Bend, Arizona
6. March 10, 1999, 4:00 to 6:00 p.m., Casa Grande, Arizona

DOE will publish additional notices of the dates, times, and locations of the scoping meetings in local newspapers in advance of the scheduled meetings. Any necessary changes will be announced in the local media.

Requests to speak at a public scoping meeting(s) should be received by Mrs. Ellen Russell at the address indicated below on or before March 3, 1999. Requests to speak may also be made at the time of registration for the scoping meeting(s). However, persons who submitted advance requests to speak will be given priority if time should be limited during the meeting.

ADDRESSES: Written comments or suggestions on the scope of the EIS and requests to speak at the scoping meeting(s) should be addressed to: Mrs. Ellen Russell, Office of Fossil Energy (FE–27), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350; phone 202–586–9624, facsimile: 202–287–5736, or electronic mail at Ellen.Russell@hq.doe.gov.

The locations of the scoping meetings are:

1. Americana Motor Hotel, 639 North Grand Avenue, Nogales, Arizona.
2. Plaza Hotel and Conference Center, 1900 E. Speedway Boulevard, Tucson, Arizona.
3. Council Chambers, Tohono O'odham Nation, Sells, Arizona.
4. Ajo Community Center in the E. S. Bud Walker Park, 290 5th Street, Ajo, Arizona.
5. Gila Bend Unified School District #24, Logan Auditorium, 308 N. Martin, Gila Bend, Arizona.
6. Francisco Grande Resort, 26000 Gila Bend Highway, Casa Grande, Arizona.

FOR FURTHER INFORMATION CONTACT: For information on the proposed project or to receive a copy of the Draft EIS when it is issued, contact Mrs. Russell at the address listed in the **ADDRESSES** section of this notice.

For general information on the DOE NEPA review process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119; Phone: 202–586–4600 or leave a message at 800–472–2756; Facsimile: 202–586–7031.

SUPPLEMENTARY INFORMATION:

Background and Need for Agency Action

Executive Order 10485, as amended by Executive Order 12038, requires that a Presidential permit be issued by DOE before electric transmission facilities may be constructed, connected, operated, or maintained at the U.S. international border. The Executive Order provides that a Presidential permit may be issued after a finding that the proposed project is consistent with the public interest. In determining

consistency with the public interest, DOE considers the impacts of the project on the reliability of the U.S. electric power system and on the environment. The regulations implementing the Executive Order have been codified at 10 CFR §§ 205.320–205.329. Issuance of the permit indicates that there is no Federal objection to the project, but does not mandate that the project be completed.

On December 28, 1998, PNM, a regulated public utility, filed an application for a Presidential permit with the Office of Fossil Energy of DOE. PNM proposes to construct two transmission lines on a single right-of-way extending approximately 160 miles from the switchyard adjacent to the PVNGS, located approximately 30 miles west of Phoenix, Arizona, to the U.S.-Mexico border in the vicinity of Nogales, Arizona. South of the border, PNM would extend the lines approximately 60 miles to the Santa Ana Substation, located in the City of Santa Ana, Sonora, Mexico, and owned by the Comision Federal de Electricidad (CFE), the national electric utility of Mexico.

In its application, PNM states that it is considering designing the transmission lines for either AC or DC operation. PNM also states in its application that it may use a phased approach for construction; i.e., one line might be installed initially and the second line added some time in the future.

If the AC option is chosen, a back-to-back AC/DC/AC converter station would be constructed within the U.S. in the vicinity of the U.S.-Mexico border. The AC transmission line(s) would be operated at 345 kV between the PVNGS and the back-to-back converter station and at 230 kV between the converter station and CFE's Santa Ana Substation. Each line would have an electrical transfer capability of approximately 400 megawatts (MW). If a phased approach is used, the two lines would be constructed on two separate sets of support structures, but on the same right-of-way. If both AC lines are constructed at the same time, both electrical circuits would be installed on a single set of support structures.

If the DC option is selected, an AC/DC converter station would be installed at each end of the proposed line(s); i.e., within or near the PVNGS in the U.S., and at the Santa Ana Substation in Mexico. If PNM elects to use a phased approach, the DC line would initially be operated as a mono-pole DC line (one conductor) and have a nominal operating voltage of ±400 kV, with an electrical transfer capability of between 400 MW and 500 MW. With the addition of the second line (second conductor), the resulting interconnection would be upgraded to bi-pole ±400 kV operation, with a transfer capability of between 800 MW and 1000 MW.

PNM has identified three alternative corridors for construction of the cross-border transmission lines. Each of the three proposed alternative corridors begins at the PVNGS switchyard and is approximately two miles wide. However, when constructed, the transmission lines are expected to use a right-of-way of no more than 150 to 200 feet in width. The first alternative corridor extends south from the PVNGS switchyard approximately 130 miles within the U.S. to the U.S.-Mexico border, crossing the Barry M. Goldwater Air Force Range and the western boundary of the Tohono O'odham Nation. The second alternative corridor proceeds slightly east and south from the PVNGS switchyard and extends approximately 160 miles within the U.S., crossing the middle to eastern area of the Tohono O'odham Nation. The third alternative corridor extends southeasterly from the PVNGS switchyard to an area south of Tucson, Arizona, where it turns south to Nogales, Arizona. This corridor is approximately 250 miles long within the U.S. Each of the three proposed alternative corridors would cross approximately 25 linear miles of 100-year floodplains.

Project activities would include clearing rights-of-way and access roads, digging tower footings, setting transmission towers, hanging transmission wires, and modifying existing substation(s).

The PNM application, including associated maps and drawings, can be downloaded in its entirety from the Fossil Energy web site (www.fe.doe.gov; choose regulatory programs, then electricity regulations, then pending proceedings). PNM states that there are no firm contracts in place for the sale of power to Mexico using the proposed transmission lines. Prior to commencing electricity exports to Mexico using the proposed lines, PNM, or any other electricity exporter, must obtain an electricity export authorization from DOE pursuant to section 202(e) of the Federal Power Act.

Identification of Environmental Issues

A purpose of this notice is to solicit comments and suggestions for consideration in the preparation of the EIS. As background for public comment, this notice contains a list of potential environmental issues that DOE has tentatively identified for analysis. This list is not intended to be all-inclusive or to imply any predetermination of impacts. Following is a preliminary list of issues that may be analyzed in the EIS:

(1) Socioeconomic impacts of development of the land tracts and their subsequent uses;

(2) Impacts to protected, threatened, endangered, or sensitive species of animals or plants, or their critical habitats;

(3) Impacts to floodplains and wetlands;

(4) Impacts to cultural or historic resources;

(5) Impacts to human health and safety;

(6) Impacts on air, soil, and water;

(7) Visual impacts;

(8) Disproportionately high and adverse impacts to minority and low-income populations; and

(9) Environmental impacts within Mexico.

The EIS will also consider alternatives to the proposed transmission lines, including, to the extent practicable:

(1) No Action Alternative: The EIS will analyze the impacts associated with ''no action.'' Since the proposed action is the issuance of a Presidential permit for the construction of the proposed transmission lines, ''no action'' means that the permit would not be issued. However, not issuing the permit would not necessarily imply maintenance of the status quo. It is possible that the applicant and/or the Mexican government may take other actions if the proposed transmission lines are not built. The No Action Alternative will address the environmental impacts that are reasonably foreseeable to occur if the Presidential permit is not issued.

(2) Construction of a powerplant in the U.S. closer to the U.S.-Mexico border with a shorter transmission line extending to the border, an alternative concept for supplying electric power to the target region.

Scoping Process

Interested parties are invited to participate in the scoping process both to refine the preliminary alternatives and environmental issues to be analyzed in depth, and to eliminate from detailed study those alternatives and environmental issues that are not significant or pertinent. The scoping process is intended to involve all interested agencies (Federal, state, county, and local), public interest groups, Native American Tribes, businesses, and members of the public. Potential Federal cooperating agencies include the U.S. Department of the

Interior (including the Bureau of Land Management, Bureau of Indian Affairs, and the Fish and Wildlife Service), the U.S. Air Force, the International Boundary and Water Commission, and the Tohono O'odham Nation.

Public scoping meetings will be held at the locations, dates, and times indicated above under the **DATES** and **ADDRESSES** sections. These scoping meetings will be informal and conducted as discussions between attendees and DOE. The DOE presiding officer will establish only those procedures needed to ensure that everyone who wishes to speak has a chance to do so and that DOE understands all issues and comments. Speakers will be allocated approximately 10 minutes for their oral statements. Depending upon the number of persons wishing to speak, DOE may allow longer times for representatives of organizations. Consequently, persons wishing to speak on behalf of an organization should identify that organization in their request to speak. Persons who have not submitted a request to speak in advance may register to speak at the scoping meeting(s), but advance requests are encouraged. Should any speaker desire to provide for the record further information that cannot be presented within the designated time, such additional information may be submitted in writing by the date listed in the **DATES** section. Both oral and written comments will be considered and given equal weight by DOE. Meetings will begin at the times specified and will continue until all those present who wish to participate have had an opportunity to do so.

Draft EIS Schedule and Availability

The Draft EIS is scheduled for completion by October 1999, at which time its availability will be announced in the **Federal Register** and public comments again will be solicited.

Those individuals who do not wish to submit comments or suggestions at this time but who would like to receive a copy of the Draft EIS for review and comment when it is issued should notify Mrs. Russell at the address above.

The Draft EIS will be made available for public inspection at several public libraries or reading rooms in Arizona. A notice of these locations will be provided in the **Federal Register** at a later date.

Issued in Washington, DC, on February 9, 1999.

Peter N. Brush,

Principal Deputy Assistant Secretary, Environment, Safety and Health.

[FR Doc. 99–3508 Filed 2–11–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada Test Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site.

DATES: Wednesday, March 3, 1999: 5:30 p.m.–9:00 p.m.

ADDRESSES: U.S. Department of Energy, Nevada Support Facility, Great Basin Room, 232 Energy Way, North Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Kevin Rohrer, U.S. Department of Energy, Office of Environmental Management, P.O. Box 98518, Las Vegas, Nevada 89193–8513, phone: 702–295–0197.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

5:30 p.m.—Call to Order
5:40 p.m.—Presentations
7:00 p.m.—Public Comment/Questions
7:30 p.m.—Break
7:45 p.m.—Review Action Items
8:00 p.m.—Approve Meeting Minutes
8:10 p.m.—Committee Reports
8:45 p.m.—Public Comment
9:00 p.m.—Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Kevin Rohrer at the address listed above.

Issued at Washington, DC, on February 8, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–3553 Filed 2–11–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Monticello Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Monticello. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATE AND TIME: Wednesday, February 17, 1999; 7:00 p.m.–9:00 p.m.

ADDRESS: San Juan County Courthouse, 2nd Floor Conference Room, 117 South Main, Monticello, Utah 84535.

FOR FURTHER INFORMATION CONTACT: Audrey Berry, Public Affairs Specialist, Department of Energy, Grand Junction Projects Office, P.O. Box 2567, Grand Junction, CO, 81502 (970) 248–7727.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to advise DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: Updates on repository; Monticello surface and groundwater; reports from subcommittees on local training and hiring; and health and safety, and future land use.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Audrey Berry's office at the

address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the end of the meeting. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Audrey Berry, Department of Energy Grand Junction Projects Office, P.O. Box 2567, Grand Junction, CO 81502, or by calling her at (970) 248–7727.

Issued at Washington, DC on February 8, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–3554 Filed 2–11–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science

Fusion Energy Sciences Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Fusion Energy Sciences Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, March 3, 1999, 9:00 a.m. to 6:00 p.m.; Thursday, March 4, 1999, 8:30 a.m. to 6:00 p.m.; and Friday, March 5, 1999, 8:30 a.m. to 12:00 noon.

ADDRESSES: University of California, San Diego (Building 302, University Center); 9500 Gilman Drive; La Jolla, California 92093.

FOR FURTHER INFORMATION CONTACT: Donald H. Priester, Office of Fusion Energy Sciences; U.S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874–1290; Telephone: 301–903–4941.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting:

- Discuss the draft Panel report on the opportunities and requirements of a fusion energy sciences program, including the technical requirements of a fusion energy program;
- Hear presentations on General Atomics (GA) programs and visit the GA facilities; and
- Discuss international collaborations and pulsed power program.

Tentative Agenda

Wednesday, March 3, 1999

9:00 a.m.—Visit General Atomics.
2:00 p.m.—Discuss Opportunities Panel Report.
5:30 p.m.—Public Comments.
6:00 p.m.—Adjourn.

Thursday, March 4, 1999

8:30 a.m.—Continue Discussions on Panel Report.
2:00 p.m.—Discuss International Collaborations Pulsed Power program.
6:30 p.m.—Adjourn.

Friday, March 5, 1999

8:30 a.m. Continue Discussions.
12:00 noon Adjourn.

Public Participation

The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Donald H. Priester at 301–903–8584 (fax) or don.priester@science.doe.gov (email). You must make your request for an oral statement at least 5 days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes

We will make the minutes of this meeting available for public review and copying within 30 days at the Freedom of Information Public Reading Room; I–190; Forrestal Building; 1000 Independence Avenue, S.W.; Washington, D.C., between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on February 8, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–3555 Filed 2–11–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA99–12–000]

Aladdin Petroleum Corporation; Notice of Petition for Adjustment

February 8, 1999.

Take notice that on January 11, 1999, Aladdin Petroleum Corporation (Aladdin), filed a petition for adjustment in Docket No. SA99–12–000, pursuant to Section 502(c) of the Natural Gas Policy Act of 1978. Aladdin requests relief from paying the interest portion of the Kansas ad valorem tax refunds [1] that it owes to Colorado Interstate Gas Company (CIG), for Aladdin's working interest in the Keller A Lease, located in Finney County, Kansas, since Aladdin can no longer recoup its refund from this lease.[2] Aladdin states that the payment of the Kansas ad valorem tax refunds will create a profound economic hardship for Aladdin, since the crude oil and natural gas prices on its production have fallen to the point that almost 75 percent of Aladdin's remaining leasehold interests are uneconomical to produce. Aladdin also requests that it be permitted to amortize the principal portion of its refund obligation over a reasonable period of time. Aladdin's petition is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory

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[1] The Commission's September 10, 1997 order in Docket No. RP97–369–000 *et al.* [80 FERC ¶ 61,264 (1997); rehearing denied, 82 FERC ¶ 61,058 (1998)] required First Sellers to make such refunds for the period from October of 1983 through June of 1988.

[2] Aladdin explains that the Graham-Michaelis Corporation (GMC) was the operator of the Keller A Lease until 1991, when GMC and Aladdin sold their respective working interests in the lease to Helmerich & Payne, Inc. Aladdin adds that GMC was a party to certain gas purchase contracts with CIG, that GMC acted on behalf of itself and its working interest owners (including Aladdin), and that GMC received the proceeds from CIG's gas purchases, requested reimbursement of ad valorem taxes, and passed those funds onto Aladdin and GMC's other Keller A Lease working interest owners.

Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Secretary.

[FR Doc. 99–3456 Filed 2–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP87–203–007]

CNG Transmission Corporation; Notice of Petition To Amend

February 8, 1999.

Take notice that on January 29, 1999, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP87–203–007, a petition to amend the authorizations issued on August 18, 1987 in Docket No. CP87–203–000,[1] pursuant to Section 7 of the Natural Gas Act (NGA) and Part 157 of the Federal Energy Regulatory Commission's (Commission) Regulations, to expand the certificated boundaries of the Tioga Storage Pool, located in Tioga County, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNG seeks to expand the certificated boundaries of the Tioga Storage Pool. CNG says the proposed new boundary will reflect the full extent of the area currently used for storage. CNG also seeks authorization for a 2000 foot protective boundary around the storage pool. Additionally, CNG requests authorization to convert two observation wells to injection/withdrawal wells.

Any person desiring to be heard or making any protest with reference to said application should on or before March 1, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the Requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or 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 must file a motion to intervene in accordance with the Commisson's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other 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 serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court. The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the commission by Sections 7 and 15 of the Natural Gas Act and the Commssion's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CNG to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–3454 Filed 2–11–99; 8:45 am]

BILLING CODE 6717–01–M

[1] 40 FERC ¶ 61,185 (1987).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4715–014]

Felts Mills Energy Partners, L.P.; Notice Dismissing Request for Rehearing

February 8, 1999.

On December 8, 1998, the Director, Office of Hydropower Licensing, issued an order granting to the licensee for the Felts Mills Project No. 4715 an extension of time to commence construction. On January 7, 1999, New York Rivers United filed a request for rehearing of the Directors order.

Rule 713 of the Commission's Rules of Practice and Procedure provides that rehearing may be sought only with respect to a ''final Commission decision or other final order.'' [1] The Director's order in this case, extending the deadline to commence construction, is interlocutory, and is therefore not subject to rehearing.[2] Accordingly, New York Rivers United's request for rehearing is dismissed.[3]

This notice constitutes final agency action. Requests for rehearing by the Commission of this dismissal notice may be filed within 30 days of the date

[1] 18 CFR 385.713(b).

[2] *See, e.g.,* Wisconsin Valley Improvement Company, 80 FERC ¶ 61,319 (1997).

[3] Even if the rehearing request had not been interlocutory, it would have to be rejected since a request for rehearing may be filed only by a party to the proceeding. With regard to post-licensing proceedings, the Commission only entertains motions to intervene where the filings at issue entail material changes in the plan of project development or in the terms and conditions of the license, or could adversely affect the rights of property-holders in a manner not contemplated by the license. *See* Kings River Conservation District, 36 FERC ¶ 61,365 (1986). Such was not the case here. Thus, notice of this proceeding was not issued, and motions to intervene were not entertained.

of issuance of this notice, pursuant to 18 CFR 385.713.

David P. Boergers,

Secretary.

[FR Doc. 99–3455 Filed 2–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1640–000, et al.]

Central Maine Power Company, et al.; Electric Rate and Corporate Regulation Filings

February 5, 1999.

Take notice that the following filings have been made with the Commission:

1. Central Maine Power Company

[Docket No. ER99–1640–000]

Take notice that on February 1, 1999, Central Maine Power Company (CMP), tendered for filing a Notice of Termination of the Power Sales Agreement with Houlton Water Company (Rate Schedule FERC No. 124).

Comment date: February 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Tucson Electric Power Company

[Docket Nos. AC99–33–000 and EL99–33–000]

Take notice that on January 21, 1999, Tucson Electric Power Company filed a request for the Chief Accountant of the Commission to approve Tucson's proposed accounting treatment of buy out costs arising from Tucson's buy out of a coal supply agreement.

Comment date: February 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Boston Edison Company and Entergy Nuclear Generation Company

[Docket Nos. EC99–18–000, ER99–1023–000, and EL99–22–000]

Take notice that on January 29, 1999, Boston Edison Company and Entergy Nuclear Generation Company filed an amendment to the Purchase and Sale Agreement (P&S) between them.

Comment date: February 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Electric Clearinghouse, Inc.; Progress Power Marketing, Inc.; Williams Energy Services Company; Southern Energy Retail Trading and Marketing, Inc.; Cinergy Capital & Trading, Inc.; CinCap V, LLC; CinCap IV, LLC; PanCanadian Energy Services, Inc.; Tenaska Power Services Co.; Utility Management and Consulting, Inc.

[Docket Nos. ER94–968–025; ER96–1618–011; ER95–305–019; ER98–1149–002; ER93–730–011; ER98–4055–002; ER98–421–005; ER90–168–040; ER94–389–018 and ER96–525–010]

Take notice that on January 29, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

5. ConAgra Energy Service, Inc.; e prime, Inc.; NEV East, L.L.C.; NEV California, L.L.C.; NEV Midwest, L.L.C.; Citizens Power Sales; Hartford Power Sales, L.L.C.; Spokane Energy, L.L.C.; Select Energy, Inc.; DPL Energy; New Energy Ventures, Inc.; NorAm Energy Services, Inc.; C.C. Pace Energy Services, a Division of C.C. Pace Resources, Inc.; Pepco Services, Inc.

[Docket Nos. ER95–1751–013; ER95–1269–013; ER97–4652–005; ER97–4653–005; ER97–4654–005; ER94–1685–023; ER95–393–022; ER98–4336–001; ER99–14–002; ER96–2601–010; ER97–4636–005; ER94–1247–021; ER94–1181–018; and ER98–3096–002]

Take notice that on January 29, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

6. CL Power Sales Six, L.L.C.; CL Power Sales Seven, L.L.C.; CL Power Sales Ten, L.L.C.; CL Power Sales Eight, L.L.C.; CL Power Sales Nine, L.L.C.; CL Power Sales Two, L.L.C.; CL Power Sales One, L.L.C.; CL Power Sales Three, L.L.C.; CL Power Sales Four, L.L.C.; CL Power Sales Five, L.L.C.

[Docket Nos. ER96–2652–021; ER96–2652–022; ER96–2652–023; ER96–2652–024; ER96–2652–025; ER95–892–033; ER95–892–034; ER95–892–035; ER95–892–036; and ER95–892–037]

Take notice that on January 29, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

7. TC Power Solutions; TC Power Solutions; TC Power Solutions; Mid-American Resources, Inc.; Milford Power Limited Partnership; QST Energy Trading Inc.; Southern Company Energy Marketing L.P.; Calpine Power Services Company; Constellation Power Source, Inc.; Mid-American Power LLC; Russell Energy Services Company; Koch Energy Trading, Inc.

[Docket Nos. ER97–1117–005; ER97–1117–006; ER97–1117–007; ER95–78–006; ER93–493–011; ER96–553–013; ER97–4166–003; ER94–1545–016; ER97–2261–008; ER96–1858–011; ER96–2882–009; and ER95–218–016]

Take notice that on January 29, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

8. ECONnergy Energy Co., Inc.

[Docket Nos. ER98–2553–001 and ER98–2553–002]

Take notice that on January 26, 1999, the above-mentioned power marketer filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

9. Western Resources, Inc.

[Docket No. ER99–1642–000]

Take notice that on February 1, 1999, Western Resources, Inc. (Western Resources), tendered for filing a change to its FERC Electric Tariff, First Revised Volume No. 5. Western Resources states that the change is to deny long-term firm transmission service under Western Resources transmission tariff when such service is available through the Southwest Power Pool, Inc., regional transmission service tariff.

A copy of the filing was served upon the Kansas Corporation Commission.

Comment date: February 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Public Service Company of New Mexico

[Docket No. ER99–1643–000]

Take notice that on February 1, 1999, Public Service Company of New Mexico (PNM), tendered for filing two unilaterally executed service agreements with Texas New Mexico Power Company (TNMP). One agreement is a service agreement for firm point-to-point transmission service under the terms of PNM's Open Access Transmission Tariff (OATT), and the other agreement is a Control Area Service Agreement which incorporates specific sections of PNM's OATT. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

PNM requests an effective date of January 1, 1999, for these agreements.

Comment date: February 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Public Service Company of New Mexico

[Docket No. ER99–1644–000]

Take notice that on February 1, 1999, Public Service Company of New Mexico (PNM), tendered for filing executed service agreements, for point-to-point transmission service under the terms of PNM's Open Access Transmission Service Tariff, with Cargill-Alliant, LLC (2 agreements, dated January 29, 1999 for Non-Firm and Short-Term Firm Service).

PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: February 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Deseret Generation & Transmission Co-operative

[Docket No. ER99–1645–000]

Take notice that on February 1, 1999, Deseret Generation & Transmission Co-operative tendered for filing an executed umbrella short-term firm point-to-point service agreement with Enron Power Marketing, Inc., under its open access transmission tariff.

Deseret requests a waiver of the Commission's notice requirements for an effective date of February 1, 1999.

Deseret's open access transmission tariff is currently on file with the Commission in Docket No. OA97–487–000. Enron Power Marketing, Inc., has been provided a copy of this filing.

Comment date: February 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Deseret Generation & Transmission Co-operative

[Docket No. ER99–1646–000]

Take notice that on February 1, 1999, Deseret Generation & Transmission Co-operative tendered for filing an executed umbrella non-firm point-to-point service agreement with Enron Power Marketing, Inc., under its open access transmission tariff.

Deseret requests a waiver of the Commission's notice requirements for an effective date of February 1, 1999.

Deseret's open access transmission tariff is currently on file with the Commission in Docket No. OA97–487–000. Enron Power Marketing, Inc., has been provided a copy of this filing.

Comment date: February 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Montana Power Company

[Docket No. ER99–1647–000]

Take notice that on February 1, 1999, Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 an executed Network Integration Transmission Service Agreement and Network Operating Agreement with Montana Resources and a Firm Point-To-Point Transmission Service Agreement with Conoco, Inc. (Conoco), under Montana's FERC Electric Tariff, Fourth Revised Volume No. 5 (Open Access Transmission Tariff).

A copy of the filing was served upon Montana Resources and Conoco.

Comment date: February 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Potomac Electric Power Company

[Docket No. ER99–1648–000]

Take notice that on February 1, 1999, Potomac Electric Power Company (Pepco), tendered for filing service agreements pursuant to Pepco FERC Electric Tariff, Original Volume No. 1, entered into between Pepco and Tennessee Power Company; and Consumers Energy Company and The Detroit Edison Company, which with Consumers shall be known as the ''Michigan Companies.''

An effective date of January 29, 1999, for these service agreements, with waiver of notice requirement is requested.

Comment date: February 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Illinois Power Company

[Docket No. ER99–1649–000]

Take notice that on February 1, 1999, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing updated specification pages to the existing Network Service Agreement under which Cornbelt Energy Company will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of January 1, 1999.

Comment date: February 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Illinois Power Company

[Docket No. ER99–1650–000]

Take notice that on February 1, 1999, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing Network Integration Transmission Service Agreements under which Soyland Power Cooperative will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of January 1, 1999.

Comment date: February 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Ameren Services Company

[Docket No. ER99–1651–000]

Take notice that on February 1, 1999, Ameren Services Company (ASC), tendered for filing Service Agreements for Firm Point-to-Point Transmission Services between ASC and Allegheny

Power Service Corporation, Oneok Power Marketing Company and Statoil Energy Trading, Inc., (the parties). ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

Comment date: February 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Ameren Services Company

[Docket No. ER99–1652–000]

Take notice that on February 1, 1999, Ameren Services Company (ASC), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Services between ASC and Allegheny Power Service Corporation, Oneok Power Marketing Company and Statoil Energy Trading, Inc., (the parties). ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

Comment date: February 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Ameren Services Company

[Docket No. ER99–1653–000]

Take notice that on February 1, 1999, Ameren Services Company (ASC), tendered for filing a Service Agreement for Long-Term Firm Point-to-Point Transmission Services between ASC and Electric Clearinghouse, Inc., (EC). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to EC pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

Comment date: February 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Ameren Services Company

[Docket No. ER99–1654–000]

Take notice that on February 1, 1999, Ameren Services Company (Ameren), tendered for filing Service Agreements for Market Based Rate Power Sales between Ameren and The Empire District Electric Company, Merrill Lynch Capital Services, Inc., and PP&L EnergyPlus Company (the parties). Ameren asserts that the purpose of the Agreements is to permit Ameren to make sales of capacity and energy at market based rates to the parties pursuant to Ameren's Market Based Rate Power Sales Tariff filed in Docket No. ER98–3285–000.

Comment date: February 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Kentucky Utilities Company

[Docket No. ER99–1656–000]

Take notice that on February 1, 1999, Kentucky Utilities Company (KU), tendered for filing pursuant to Section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d, a service agreement between KU and the City of Nicholasville, Kentucky (Nicholasville) which adds a new metering point to the existing service agreement for wholesale power service between KU and Nicholasville.

KU respectfully requests that the Commission waive the 60-day prior notice requirement and accept the Agreement for filing and allow it to become effective on February 1, 1999.

Copies of this filing were served upon Nicholasville, the Kentucky Public Service Commission and the Virginia State Corporation Commission.

Comment date: February 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Kentucky Utilities Company

[Docket No. ER99–1657–000]

Take notice that on February 1, 1999, Kentucky Utilities Company (KU), tendered for filing addenda to existing SEPA Power Supply contracts between KU and its wholesale requirements customers.

KU requests an effective date of January 1, 1999, for these contracts.

Copies of this filing have been served upon each of the affected customers, the Kentucky Public Service Commission and the Virginia State Corporation Commission.

Comment date: February 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Southern Company Services, Inc.

[Docket No. ER99–1658–000]

Take notice that on February 1, 1999, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Company) tendered for filing a Network Integration Transmission Service Agreement (and associated Specifications and Network Operating Agreement) executed by SCS (as agent for Southern Company) and Alabama Electric Cooperative, Inc., under Southern Companies Open Access Transmission Tariff (FERC Electric Tariff, Third Revised Volume No. 5). Service under that agreement began on January 1, 1999. Concurrent with that commencement date, Southern Company and AEC are canceling pre-existing transmission arrangements that are being superseded by the provision of service of AEC under the tariff.

Comment date: February 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Central Power and Light Company; West Texas Utilities Company; Public Service Company of Oklahoma; Southwestern Electric Power Company

[Docket No. ER99–1659–000]

Take notice that on February 1, 1999, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company (collectively, the CSW Operating Companies) submitted an unexecuted Network Service Agreement (NSA) and an unexecuted Network Operating Agreement (NOA) between the CSW Operating Companies and Northeast Texas Electric Cooperative, Inc., (NTEC).

The CSW Operating Companies request a January 1, 1999, effective date for the agreements.

The CSW Operating Companies state that a copy of this filing has been served on NTEC.

Comment date: February 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Central Power and Light Company; West Texas Utilities Company; Public Service Company of Oklahoma; Southwestern Electric Power Company

[Docket No. ER99–1660–000]

Take notice that on February 1, 1999, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company (collectively, the CSW Operating Companies) submitted an unexecuted Network Service Agreement (NSA) and an unexecuted Network Operating Agreement (NOA) between the CSW Operating Companies and East Texas Electric Cooperative, Inc., (ETEC).

The CSW Operating Companies request a January 1, 1999, effective date for the agreements.

The CSW Operating Companies state that a copy of this filing has been served on ETEC.

Comment date: February 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. West Texas Utilities Company

[Docket No. ER99–1661–000]

Take notice that on February 1, 1999, West Texas Utilities Company (WTU), tendered for filing three agreements with Brazos Electric Cooperative, Inc. (Brazos), a long-term market-based power sales agreement, a service agreement under the Central and South West Open Access Transmission Tariff, and an Interconnection Agreement.

WTU seeks an effective date of January 1, 1999, for the three agreements and, accordingly, seeks waiver of the Commission's notice requirement.

Copies of the filing were served on Brazos and the Public Utility Commission of Texas.

Comment date: February 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Cinergy Services, Inc.

[Docket No. ER99–1662–000]

Take notice that on February 1, 1999, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Cinergy Services, Inc. (Cinergy, the Customer).

Cinergy and Cinergy, the Customer are requesting an effective date of February 1, 1999.

Comment date: February 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Montaup Electric Company

[Docket No. ER99–1663–000]

Take notice that on February 1, 1999, Montaup Electric Company (Montaup), tendered for filing pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations, an agreement for the resale of Constellation Power Source (CPS) of electricity which Montaup had contracted to purchase under four unit power contracts. The agreement also provides for the resale by Montaup to CPS of certain of Montaup's rights to acquire electrical energy under a contract between a group of New England electric utilities and Hydro Quebec, a Canadian utility.

Copies of the filing have been served on the regulatory agencies of the Commonwealth of Massachusetts and the States of Rhode Island and Connecticut.

Comment date: February 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Western Resources, Inc.

[Docket No. ER99–1641–000]

Take notice that on February 1, 1999, Western Resources, Inc., tendered for filing an agreement between Western Resources and Alliant Energy. Western Resources states that the purpose of the agreement is to permit the customer to take service under Western Resources' market-based power sales tariff on file with the Commission.

The agreement is proposed to become effective January 12, 1999.

Copies of the filing were served upon Alliant Energy and the Kansas Corporation Commission.

Comment date: February 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 99–3452 Filed 2–11–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF99–4011–000, et al.]

Southwestern Power Administration, et al.; Electric Rate and Corporate Regulation Filings

February 4, 1999.

Take notice that the following filings have been made with the Commission:

1. Southwestern Power Administration

[Docket No. EF99–4011–000]

Take notice that on January 29, 1999, the Deputy Secretary, U.S. Department of Energy, submitted to the Federal Energy Regulatory Commission (FERC) for confirmation and approval on a final basis, pursuant to the authority vested in the FERC by Delegation Order No. 0204–108, as amended November 10, 1993, 58 FR 59717, the following Southwestern Power Administration (Southwestern) Integrated System rate schedules:

Rate Schedule P–98B, Wholesale Rates for Hydro Peaking Power

Rate Schedule NFTS–98B, Wholesale Non-Federal Transmission Service

The Integrated System rate schedules were confirmed and approved on an interim basis by the Deputy Secretary in Rate Order No. SWPA–39 for the period January 1, 1999, through September 30, 2001, and have been submitted to the FERC for confirmation and approval on a final basis for the same period. The FY 1998 Power Repayment Study has confirmed that rates prescribed by currently-approved Rate Schedules P–98A, Wholesale Rates for Hydro Peaking Power, and NFTS–98, Wholesale Rates for Non-Federal Transmission Service, are sufficient to meet repayment criteria and do not require any adjustment. However, certain aspects of the terms and conditions set forth in the rate schedules need to be revised to clarify and accommodate market conditions experienced during this past year.

The names of the rate schedules have been changed from P–98A and NFTS–98 to P–98B and NFTS–98B to reflect the fact that revisions have been made. Minor corrections and modifications were made throughout the rate schedules for clarification purposes. The basis for determining the rate for Real Power Losses has been revised in both rate schedules. This change is required since the Energy Information Administration no longer compiles the information which was the basis for determining the rate for losses. In addition, the Capacity Overrun Penalty provisions have been revised to provide a greater incentive to not overrun Southwestern's Integrated System capacity. The penalty set forth in the current rate schedules was insufficient to serve as a deterrent in light of this past summer's price escalation. These changes will have no impact on the amortization or status of repayment forecasted in the power repayment studies and will not require rate changes. Revenues based on current rates remain sufficient to meet repayment criteria.

Comment date: February 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. PSEG PPN Energy Company Ltd.

[Docket No. EG99–41–000]

Take notice that on January 29, 1999, PSEG PPN Energy Company Ltd. (PSEG PPN), with its principal office at 608 St. James Court, St. Denis Street, Port Louis, Mauritius filed with the Federal Energy Regulatory Commission an amended application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

PSEG PPN is a company organized under the laws of Mauritius. PSEG PPN will be engaged, directly or indirectly through an affiliate as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935, exclusively in owning, or both owning and operating a gas and/or naphtha-fired combined cycle generating facility consisting of one electric generating unit with a nameplate rating of approximately 347 megawatts and incidental facilities located in Tamil Nadu, India; selling electric energy at wholesale and engaging in project development activities with respect thereto. PSEG PPN amended its original application to indicate that it has no current plans of engaging in fuel delivery or brokering activities.

Comment date: February 25, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the amended application.

3. Western Power Trading Forum Complainant, v. California Independent System Operator Corporation Respondent

[Docket No. EL99–30–000]

Take notice that on January 20, 1999, the Western Power Trading Forum (Complainant) filed a complaint and request for expedited relief under Sections 206 and 306, *et seq.*, of the Federal Power Act, 16 U.S.C. §§ 824e and 825e (1994), and Section 206 of the Commission's Rules of practice and procedure, 18 CFR 385.206, alleging that the Grid Management Charge of the California Independent System Operator Corporation (ISO) is unjust, unreasonable, unduly discriminatory, anticompetitive, excessive, and in violation of a prior ISO settlement approved in Docket Nos. ER98–211–000, *et al.*

Comment date: March 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Ocean Vista Power Generation, L.L.C.

[Docket No. ER99–1536–000]

Take notice that, on January 29, 1999, Ocean Vista Power Generation, L.L.C. submitted a report of transactions that occurred under its Market-Based Power Sales Tariffs during the quarter ending December 31, 1998.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Mountain Vista Power Generation, L.L.C.

[Docket No. ER99–1537–000]

Take notice that, on January 29, 1999, Mountain Vista Power Generation, L.L.C. submitted a report of transactions that occurred under its Market-Based Power Sales Tariffs during the quarter ending December 31, 1998.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Energy Services, Inc.

[Docket No. ER99–1538–000]

Take notice that on January 29, 1999, Energy Services, Inc. tendered for filing its report of transactions for the quarter ending December 31, 1998.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Duke Energy Marketing Corp.

[Docket No. ER99–1539–000]

Take notice that on January 29, 1999, Duke Energy Marketing Corp. (DEMC) tendered for filing its report of transactions for the quarter ending December 31, 1998.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Southwestern Public Service Company

[Docket No. ER99–1540–000]

Take notice that on January 29, 1999, New Century Services, Inc., on behalf of Southwestern Public Service Company (Southwestern), submitted a Quarterly Report under Southwestern's market-based sales tariff. The report is for the period of October 1, 1999 through December 31, 1999.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Consumers Energy Company

[Docket No. ER99–1541–000]

Take notice that on January 29, 1999, Consumers Energy Company filed a report that it made no market based sales under its wholesale power sales tariff for the quarter ending December 31, 1998.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. The Detroit Edison Company

[Docket No. ER99–1542–000]

Take notice that on January 29, 1999, The Detroit Edison Company filed a summary of market based sales under its market-based rate wholesale power sales tariff for the calendar quarter ending December 31, 1998.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Virginia Electric and Power Company

[Docket No. ER99–1543–000]

Take notice that on January 29, 1999, Virginia Electric and Power Company (Virginia Power) tendered for filing a summary of short-term transactions made during the fourth quarter of calendar year 1998 under Virginia Power's market rate sales tariff, FERC Electric Power Sales Tariff, First Revised Volume No. 4.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Bridgeport Energy, L.L.C.

[Docket No. ER99–1544–000]

Take notice that on January 29, 1999, Bridgeport Energy, L.L.C. (Bridgeport Energy) tendered for filing a quarterly report of short-term transactions made during the most recent quarter of calendar year 1998 under Bridgeport Energy's market-based rate tariff, approved by the Commission in Bridgeport Energy, L.L.C., 83 FERC ¶ 61,307 (1998).

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. State Line Energy, L.L.C.

[Docket No. ER99–1545–000]

Take notice that on January 29, 1999, State Line Energy, L.L.C. (State Line) submitted its quarterly report regarding transactions to which it was a party during the period October 1, 1998 through December 31, 1998, pursuant to its Market Rate Schedule accepted by the Commission in Docket No. ER96–2869–000.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. WKE Station Two Inc.

[Docket No. ER99–1546–000]

Take notice that on January 29, 1999, WKE Station Two Inc. tendered for

filing its summary of activity for the quarter ending December 31, 1998.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Boralex Stratton Energy, Inc.

[Docket No. ER99–1547–000]

Take notice that on January 29, 1999, Boralex Stratton Energy, Inc. tendered for filing its Transaction Report for quarter ending December 31, 1998.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Duquesne Light Company

[Docket No. ER99–1548–000]

Take notice that on January 29, 1999, Duquesne Light Company (Duquesne) tendered for filing a report of short-term transactions that occurred during the period ending December 31, 1998 under Duquesne's FERC Electric Tariff, Original Volume No. 3.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Western Kentucky Energy Corp.

[Docket No. ER99–1549–000]

Take notice that on January 29, 1999, Western Kentucky Energy Corp. tendered for filing its summary of activity for the quarter ending December 31, 1998.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. AG Energy, L.P.; Seneca Power Partners, L.P.; Sterling Power Partners, L.P.; Power City Partners, L.P.

[Docket Nos. ER99–1551–000; ER99–1552–000; ER99–1553–000 and ER99–1554–000]

Take notice that on January 27, 1999, AG-Energy, L.P., Seneca Power Partners, L.P., Sterling Power Partners, L.P. and Power City Partners, L.P. tendered for filing a report of no transactions under their market-based rate tariffs during the fourth quarter of 1998, pursuant to the Commission's letter order in Docket No. ER98–2782–000, issued June 17, 1998.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. New England Power Pool

[Docket No. ER99–1556–000]

Take notice that on January 29, 1999, the New England Power Pool (NEPOOL) Executive Committee tendered for filing the Forty-First Agreement Amending New England Power Pool Agreement, amending provisions relating to the pricing of 10-Minute Spinning Reserve service and the determination of Installed Capability Responsibilities. The NEPOOL Executive Committee states that the changes are to comply with the Commission's December 17th Order in Docket No. OA97–237–000 *et al.*, and to make the Installed Capability provisions of the Restated NEPOOL Agreement consistent with market rules recently filed in compliance with that order.

The NEPOOL Executive Committee also states that copies of these materials were sent to the participants in the New England Power Pool, and to the New England state governors and regulatory commissions.

The NEPOOL Executive Committee requests that the Forty-First Agreement be made effective as of April 1, 1999.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Oklahoma Gas and Electric Company

[Docket No. ER99–1557–000]

Take notice that on January 29, 1999, Oklahoma Gas and Electric Company (OG&E), tendered for filing a change to its FERC Electric Tariff, Second Revised Volume No. 2. OG&E states that the change is to deny Long-Term Firm Transmission Service under OG&E's transmission tariff when such service is available through the Southwest Power Pool, Inc., regional transmission service tariff.

OG&E requests an effective date for the tariff change of April 1, 1999.

Copies of this filing have been served on each of the affected parties, the Oklahoma Corporation Commission and the Arkansas Public Service Commission.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Southern Energy Kendall, L.L.C.

[Docket No. ER99–1558–000]

Take notice that on January 29, 1999, Southern Energy Kendall, L.L.C. (Southern Kendall), tendered for filing the following agreement as a service agreement under its Market Rate Tariff accepted by the Commission in the Docket No. ER98–4116–000, Master Electric Power Purchase and Sale Agreement by and between Southern Energy New England, L.L.C., and Southern Energy Kendall, L.L.C.

Southern Kendall respectfully requests waiver of the 60-day prior notice requirement to allow the service agreement to become effective as of December 31, 1998.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Central and South West Services, Inc.

[Docket No. ER99–1562–000]

Take notice that on January 29, 1999, Central and South West Services, Inc., as agent for Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company (collectively, the CSW Operating Companies) submitted a quarterly report under the CSW Operating Companies' market-based sales tariff. The report is for the period October 1, 1998 through December 31, 1998.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. CSW Power Marketing, Inc.

[Docket No. ER99–1563–000]

Take notice that on January 29, 1999, CSW Power Marketing, Inc. (CSW Power) submitted a quarterly report under CSW Power's market-based sales tariff. The report is for the period October 1, 1998 through December 31, 1998.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. PP&L, Inc.

[Docket No. ER99–1564–000]

Take notice that on January 29, 1999, PP&L, Inc. filed a summary of activity conducted under its market-based rates tariff, FERC Electric Tariff, Revised Volume No. 5, during the quarter ending December 31, 1998.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Duke Power, a Division of Duke Energy Corporation

[Docket No. ER99–1565–000]

Take notice that on January 29, 1999, Duke Power (Duke), a division of Duke Energy Corporation, tendered for filing quarterly transaction summaries for service under Duke's Rate Schedule MR, FERC Electric Tariff First Revised Volume No. 3, for the quarter ending December 31, 1998.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Louisville Gas and Electric

[Docket No. ER99–1570–000]

Take notice that on January 29, 1999, Louisville Gas and Electric Company (LG&E) tendered for filing its report of wholesale transactions made pursuant to its market-based Generation Sales Service (GSS) Tariff that occurred

during the quarter ending December 31, 1998.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Southern Company Services, Inc.

[Docket No. ER99–1588–000]

Take notice that on January 29, 1999, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively referred to as Southern Companies), submitted a quarterly report of short-term transactions that occurred under the Market-Based Rate Power Sales Tariff (FERC Electric Tariff, Original Volume No. 4) during the period October 1, 1998 through December 31, 1998.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Oeste Power Generation L.L.C.

[Docket No. ER99–1589–000]

Take notice that, on January 29, 1999, Oeste Power Generation, L.L.C. submitted a report of transactions that occurred under its Market-Based Power Sales Tariffs during the quarter ending December 31, 1998.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Ormond Beach Generation, L.L.C.

[Docket No. ER99–1590–000]

Take notice that, on January 29, 1999, Ormond Beach Generation, L.L.C. submitted a report of transactions that occurred under its Market-Based Power Sales Tariffs during the quarter ending December 31, 1998.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Public Service Electric and Gas Company

[Docket No. ER99–1591–000]

Take notice that on January 29, 1999, Public Service Electric and Gas Company (PSE&G) filed a summary of transactions made during the fourth quarter of calendar year 1998 under PSE&G's Market Based Rate Tariff, Original Volume No. 6, accepted by the Commission in Docket No. ER97–837–000.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. New England Power Company; AllEnergy Marketing Company, L.L.C.

[Docket No. ER99–1592–000]

Take notice that on January 29, 1999, New England Power Company and AllEnergy Marketing Company, L.L.C. tendered for filing a Quarterly Report of Transactions for the period ending December 31, 1998.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

32. Dayton Power and Light Company

[Docket No. ER99–1593–000]

Take notice that on January 29, 1999, Dayton Power and Light Company (Dayton) tendered for filing a summary of its Fourth Quarter market based sales.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

33. Northeast Utilities Service Company

[Docket No. ER99–1594–000]

Take notice that on January 29, 1999, Northeast Utilities Service Company tendered for filing its quarterly market-based rate summary for the quarter ending December 31, 1998.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

34. Oklahoma Gas and Electric Co.

[Docket No. ER99–1595–000]

Take notice that on January 29, 1999, Oklahoma Gas and Electric Co. tendered for filing its transaction report for quarter ending December 31, 1998.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

35. Alta Power Generation, L.L.C.

[Docket No. ER99–1596–000]

Take notice that, on January 29, 1999, Alta Power Generation, L.L.C. submitted a report of transactions that occurred under its Market-Based Power Sales Tariffs during the quarter ending December 31, 1998.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

36. Sierra Pacific Power Company

[Docket No. ER99–1597–000]

Take notice that on January 29, 1999, Sierra Pacific Power Company (Sierra), tendered for filing Service Agreements (Service Agreements) with Enron Power Marketing, Inc., for Short-Term Firm Point-to-Point Transmission Service under Sierra's Open Access Transmission Tariff (Tariff), Sierra filed the executed Service Agreement with the Commission in compliance with Sections 13.4 of the Tariff and applicable Commission regulations. Sierra also submitted a revised Sheet Nos. 148 and 148A (Attachment E) to the Tariff, which is an updated list of all current subscribers.

Sierra requests waiver of the Commission's notice requirements to permit and effective date of February 1, 1999, for Attachment E, and to allow the Service Agreement to become effective according to its terms.

Copies of this filing were served upon the Public Utilities Commission of Nevada, the Public Utilities Commission of California and all interested parties.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

37. Virginia Electric and Power Company

[Docket No. ER99–1599–000]

Take notice that on January 29, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing five (5) Service Agreements for Long Term Firm Point-to-Point Transmission Service with Virginia Power's Wholesale Power Group (Transmission Customer) under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. The tendered Service Agreements are:

(1) OASIS, #64224, dated January 1, 1999 to December 31, 1999, effective date January 1, 1999;
(2) OASIS, #64225, dated January 1, 1999 to December 31, 1999, effective date January 1, 1999;
(3) OASIS, #69744, dated June 1, 1999 to September 30, 2000, effective date June 1, 1999;
(4) OASIS, #69745, dated June 1, 1999 to September 30, 2000, effective date June 1, 1999; and,
(5) OASIS, #69746, dated June 1, 1999 to September 30, 2000, effective date June 1, 1999.

Under the tendered Service Agreements, Virginia Power will provide Long Term Firm Point-to-Point Transmission Service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

The Company requests an effective date of January 1, 1999 for Service Agreements One (1) and Two (2) listed above, and June 1, 1999 for Service Agreements Three (3), Four (4) and Five (5) listed above.

Copies of the filing were served upon the Transmission Customer, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

38. Illinois Power Company

[Docket No. ER99–1600–000]

Take notice that on January 29, 1999, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing Long-Term Firm Transmission Service Agreements under which Illinois Power Bulk Power Marketing will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of January 1, 1999.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

39. Southern Energy Canal, L.L.C.

[Docket No. ER99–1601–000]

Take notice that on January 29, 1999, Southern Energy Canal, L.L.C. (Southern Canal), tendered for filing the following agreement as a service agreement under its Market Rate Tariff accepted by the Commission in the Docket No. ER98–4115–000:

1. Master Electric Power Purchase and Sale Agreement by and between Southern Energy New England, L.L.C. and Southern Energy Canal, L.L.C.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

40. Boston Edison Company

[Docket No. ER99–1602–000]

Take notice that January 29, 1999, Boston Edison Company (Edison) of Boston, Massachusetts, tendered for filing a substitute Page 10 to its Third Amendment to the Pilgrim Power Sale Agreement between Edison and Montaup Electric Company (FERC Rate Schedule No. 69). According to Edison the substitute Page 10 is to correct an error and thereby clarify that certain costs were therein referenced for purposes of illustration rather than limitation. The Third Amendment was originally filed in Docket No. ER99–1023–000, which has been consolidated with Docket Nos. EC99–18–000 and EL99–22–000.

Edison has asked that the corrected Page 10 be made effective on the same date as the Third Amendment.

Edison states that it has served the change on all parties to the official service list in Docket Nos. EC99–18–000, ER99–1023–000, and EL99–22–000, Montaup Electric Company, and the Massachusetts Department of Telecommunications and Energy.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

41. Northeast Utilities Service Company

[Docket No. ER99–1603–000]

Take notice that on January 29, 1999, Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company, and Public Service Company of New Hampshire, tendered for filing pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Commission's Regulations, a rate schedule change for sales of electric energy to Littleton Electric Light Department (Littleton).

NUSCO states that a copy of this filing has been mailed to Littleton.

NUSCO requests that the rate schedule change become effective on April 1, 1999.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

42. PJM Interconnection, L.L.C.

[Docket No. ER99–1604–000]

Take notice that on January 29, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing one executed service agreement with PECO Energy Company for Network Integration Transmission Service.

Copies of this filing were served upon PECO Energy Company.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

43. Commonwealth Edison Company

[Docket No. ER99–1605–000]

Take notice that on January 29, 1999, Commonwealth Edison Company (ComEd), tendered for filing a revised Firm Service Agreement with Alliant Bulk Power (Alliant), under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of January 1, 1999, for the revised service agreement, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of this filing were served on Alliant.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

44. PP&L, Inc.

[Docket No. ER99–1606–000]

Take notice that on January 29, 1999, PP&L, Inc., tendered for filing a Power Supply Agreement, dated January 25, 1999, with Allegheny Electric Cooperative, Inc., of Lehigh County, Pennsylvania (AEC) under PP&L's FERC Electric Tariff Revised Volume No. 5 and an amendment and addendum to a Power Supply Agreement dated May 4, 1994 between PP&L and AEC.

PP&L requests an effective date of February 1, 1999, for the Power Supply Agreement dated January 25, 1999. PP&L requests an effective date of April 1, 1998, for the amendment and addendum to the Power Supply Agreement dated May 4, 1994.

PP&L states that copies of this filing have been supplied to AEC and to the Pennsylvania Public Utility Commission.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

45. PP&L, Inc.

[Docket No. ER99–1607–000]

Take Notice that on January 29, 1999, PP&L, Inc., tendered for filing a Power Supply Agreement, dated January 25, 1999, with Allegheny Electric Cooperative, Inc., of Lehigh County, Pennsylvania (AEC) under PP&L's FERC Electric Tariff Revised Volume No. 5, and an amendment and addendum to a Power Supply Agreement dated February 13, 1995 between PP&L and AEC.

PP&L requests an effective date of February 1, 1999, for the Power Supply Agreement dated January 25, 1999. PP&L requests an effective date of April 1, 1998, for the amendment and addendum to the Power Supply Agreement dated February 13, 1995.

PP&L states that copies of this filing have been supplied to AEC and to the Pennsylvania Public Utility Commission.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

46. PJM Interconnection, L.L.C.

[Docket No. ER99–1608–000]

Take notice that on January 29, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing five signature pages of parties to the Reliability Assurance Agreement among Load Serving Entities in the PJM Control Area (RAA), and an amended Schedule 17, listing the parties to the RAA.

PJM states that it served a copy of its filing on all parties to the RAA, including each of the parties for which a signature page is being tendered with this filing, and each of the state electric regulatory commissions within the PJM Control Area.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

47. New England Power Pool

[Docket No. ER99–1609–000]

Take notice that on January 29, 1999, the New England Power Pool (NEPOOL) Executive Committee tendered for filing new Market Rules and Procedures not previously submitted to the Commission. The NEPOOL Executive Committee has requested that the new Market Rules apply for all NEPOOL market transactions occurring after the Second Effective Date, which the Committee indicates is now projected to occur April 1, 1999.

The NEPOOL Executive Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in the New England Power Pool.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

48. New Century Services, Inc.

[Docket No. ER99–1610–000]

Take notice that on January 29, 1999, New Century Services, Inc., a service company affiliate of Public Service Company of Colorado (PSCo), Southwestern Public Service Company (SPS), and e prime, inc. (e prime), has filed on their behalf the following: PSCo's Market-Based Wholesale Power Sales Tariff; SPS's Market-Based Wholesale Power Sales Tariff (SPS Tariff); a revised and restated version of the previously approved e prime FERC Electric Rate Schedule No. 1; and a Statement of Policy and Code of Conduct with Respect to the Relationship between the NCE Operating Companies (PSCo and SPS, together with Cheyenne Light, Fuel and Power Company) and their Wholesale Marketing Affiliates, including e prime. NCS states that the SPS Tariff is not intended to supersede SPS's existing market-based sales tariff.

NCS requests that the Commission make these filings effective on January 30, 1999.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

49. The Cincinnati Gas & Electric Company; PSI Energy, Inc.

[Docket No. ER99–1611–000]

Take notice that on January 29, 1999, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (Cinergy Operating Companies) tendered for filing their quarterly transaction report for the calendar quarter ending December 31, 1998.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

50. Great Bay Power Corporation

[Docket No. ER99–1612–000]

Take notice that on January 29, 1999, Great Bay Power Corporation (Great Bay), tendered for filing a service agreement between PP&L EnergyPlus Co., and Great Bay for service under Great Bay's revised Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on July 24, 1998, in Docket No. ER98–3470–000.

The service agreement is proposed to be effective January 27, 1999.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

51. Great Bay Power Corporation

[Docket No. ER99–1613–000]

Take notice that on January 29, 1999, Great Bay Power Corporation (Great Bay), tendered for filing a service agreement between Duke Energy Trading and Marketing, L.L.C., and Great Bay for service under Great Bay's revised Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on July 24, 1998, in Docket No. ER98–3470–000.

The service agreement is proposed to be effective January 22, 1999.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

52. New England Power Pool

[Docket No. ER99–1614–000]

Take notice that on January 29, 1999, the New England Power Pool Executive Committee filed for acceptance a signature page to the New England Power Pool (NEPOOL) Agreement dated September 1, 1971, as amended, signed by Horizon Energy Corporation d/b/a Exelon Energy (Exelon Energy). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Executive Committee states that the Commission's acceptance of Exelon Energy's signature page would permit NEPOOL to expand its membership to include Exelon Energy. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Exelon Energy a member in NEPOOL.

NEPOOL requests an effective date of January 1, 1999, for commencement of participation in NEPOOL by Exelon Energy.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

53. New England Power Pool

[Docket No. ER99–1615–000]

Take notice that on January 29, 1999, the New England Power Pool (NEPOOL or Pool) Executive Committee tendered for filing a request for termination of memberships in NEPOOL, with an effective date of February 1, 1999, of CWS Energy Service, Inc. (CWS ESI). Such termination is pursuant to the terms of the NEPOOL Agreement dated September 1, 1971, as amended, and previously signed by CWS ESI. The New England Power Pool Agreement, as amended (the NEPOOL Agreement), has been designated NEPOOL FPC No. 2.

The Executive Committee states that termination of CWS ESI with an effective date of February 1, 1999, would relieve this entity, at CWS ESI's request, of the obligations and responsibilities of Pool membership and would not change the NEPOOL Agreement in any manner, other than to remove CWS ESI from membership in the Pool.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

54. Idaho Power Company

[Docket No. ER99–1616–000]

Take notice that on January 29, 1999, Idaho Power Company (IPC), tendered for filing a Service Agreement under Idaho Power Company Tariff Volume No. 6, Market Rate Power Sales, between Idaho Power Company and Tillamook People's Utility District.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

55. Automated Power Exchange, Inc.

[Docket No. ER99–1617–000]

Take notice that on January 29, 1999, Automated Power Exchange, Inc. (APX) filed its quarterly informational report. APX requested confidential treatment of the filing. The report is for the period October 1, 1998 through December 31, 1998.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

56. Atlantic City Electric Company

[Docket No. ER99–1618–000]

Take notice that on January 29, 1999, Atlantic City Electric Company (Atlantic), tendered a filing modifications the Atlantic zonal transmission rate for network and point-to-point service under the PJM open access tariff. Atlantic's existing zonal rates do not include the costs of its 69 kV facilities. Atlantic's filing includes the costs of its 69 kV facilities in its

zonal rates because these facilities function as part of Atlantic's integrated transmission system.

Atlantic requests that the Commission allow the modifications to take effect on April 1, 1999.

Atlantic states that copies of this filing have been served upon the customer and affected state commissions.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

57. PJM Interconnection, L.L.C.

[Docket No. ER99–1619–000]

Take notice that on January 29, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing 64 executed service agreements network integration transmission service under state required retail access programs and for point-to-point transmission service under the PJM Open Access Transmission Tariff.

Copies of this filing were served upon the parties to the service agreements.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

58. Public Service Electric and Gas Company

[Docket No. ER99–1620–000]

Take notice that on January 29, 1999, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to Entergy Power Marketing Corp. (Entergy), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of December 29, 1998.

Copies of the filing have been served upon Entergy and the New Jersey Board of Public Utilities.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

59. California Independent System Operator Corporation

[Docket No. ER99–1621–000]

Take notice that on January 29, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for scheduling Coordinators between the ISO and Pacificorp Power Marketing, Inc., for acceptance by the Commission.

The ISO states that this filing has been served on Pacificorp Power Marketing, Inc., and the California Public Utilities Commission.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

60. Williams Generation Company—Hazelton

[Docket No. ER99–1622–000]

Take notice that on January 29, 1999, Williams Generation Company—Hazelton tendered for filing its Power Marketer Reports for the fourth quarter of 1998.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

61. Montaup Electric Company

[Docket No. ER99–1625–000]

Take notice that on January 29, 1999, Montaup Electric Company tendered for filing its Quarterly Report of transactions for the calendar quarter ending December 31, 1998.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

62. Kentucky Utilities Company

[Docket No. ER99–1626–000]

Take notice that on January 29, 1999, Kentucky Utilities Company (KU) tendered for filing a report of transactions for the quarter ending December 31, 1998.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

63. California Independent System Operator Corporation

[Docket No. ER99–1655–000]

Take notice that on January 29, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement between the ISO and Pacificorp Power Marketing, Inc., for acceptance by the Commission.

The ISO states that this filing has been served on Pacificorp Power Marketing, Inc., and the California Public Utilities Commission.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

64. Western Resources, Inc.

[Docket No. ES99–23–000]

Take notice that on January 22, 1999, Western Resources Inc. (Western Resources), tendered for filing an application under Section 204(a) of the Federal Power Act for authorization to issue and sell, from time to time up to 1,950,000 additional common stock of Western Resources, $5.00 par value (Additional Shares) under its Employee Stock Purchase Plan. Western Resources further requests an exemption from the Commission's competitive bidding and negotiated placement requirements.

Comment date: February 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

65. Colorado Springs Utilities; East Kentucky Power Cooperative, Inc.; New York Power Authority; Omaha Public Power District

[Docket Nos. NJ97–9–004; NJ97–14–002; NJ97–10–002; and NJ97–2–004]

Take notice that between December 23–28, 1998, the above-named utilities filed revised standards of conduct in response to the Commission's November 25, 1998 Order on Standards of Conduct. 85 FERC ¶ 61,286 (1998).

Comment date: February 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

66. Virginia Electric and Power Company

[Docket No. OA96–52–005]

Take notice that on January 19, 1999, Virginia Electric and Power Company tendered for filing its refund compliance report in accordance with Section 35.19a of the Commission's regulations. This compliance report is being filed pursuant to the Commission's letter order issued June 11, 1997 in the above-captioned docket.

Comment date: March 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

67. SBR Associates and Ogden Haverhill Associates

[Docket No. QF82–190–001]

Take notice that on January 29, 1999, SBR Associates and Ogden Haverhill Associates filed an application requesting the recertification of the qualifying status of a cogeneration and small power production facility and, in the alternative, a request for waiver. Included as part of the Application is a FERC Form 556.

A copy of this filing has been served on the Massachusetts Department of Telecommunications and Energy and on the Massachusetts Electric Company.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions

or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 99–3453 Filed 2–11–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: February 8, 1999 64 FR 6071.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: February 10, 1999 10:00 a.m.

CHANGE IN THE MEETING: The following Companies have been added on the Agenda scheduled for the February 10, 1999 meeting.

Item No.	Docket No. and Company
CAE–2 ...	EL99–7–000, Braintree Electric Light Department v. Boston Edison Company. EL99–8–000, Reading Municipal Light Department v. Boston Edison Company.

David P. Boergers,

Secretary

[FR Doc. 99–3703 Filed 2–10–99; 3:55 pm]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6233–3]

Agency Information Collection Activities: Proposed Collection; Comment Request; EPA Indoor Environmental Quality Questionnaire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): EPA Indoor Environmental Quality Occupant Questionnaire; EPA No. 1619.02; OMB No. 2060–0244; with current expiration date of 1/31/99. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 13, 1999.

ADDRESSES: USEPA, Indoor Environments Division (6604J), 401 M St., SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Garvin Heath, Indoor Environments Division (6607J), 401 M St, SW, Washington, DC 20460; FAX 202–565–2071; email: heath.garvin@epa.gov

SUPPLEMENTARY INFORMATION: *Affected entities:* Entities potentially affected by this action are not limited to particular categories of respondents. However, volunteer respondents will be workers in buildings that could include a wide variety of fields and SIC codes.

Title: EPA Indoor Environmental Quality Occupant Questionnaire (OMB Control No. 2060–0244; EPA ICR No. 1619.02), expiring: 1/31/99.

Abstract: The Indoor Environmental Quality Questionnaire is a component of the EPA indoor air quality (IAQ) research program, used in the Building Assessment Survey and Evaluation (BASE) and related intervention studies. In this program, EPA is studying up to 200 large commercial and public buildings. The purpose of this program is to develop a national baseline assessment of the indoor air in such buildings and to test the effectiveness of current EPA guidance for improving IAQ. The activities EPA will conduct under this program include an Indoor Environmental Quality Questionnaire, building inspections, interviews with building maintenance workers, environmental measurements (e.g., ventilation rates, concentrations of indoor air pollutants), and other quantitative and qualitative assessments. By conducting this research, EPA will begin to be able to assess the key building parameters that affect IAQ, the incidence of certain IAQ-related health and comfort problems and effectiveness of strategies to improve IAQ and avoid IAQ problems. The Indoor Environmental Quality Questionnaire is a voluntary questionnaire asking for information pertaining to work station characteristics, working conditions, exposure to pollutants, health and well-being, and stress. Data from the Indoor Environmental Quality Questionnaire will be used to compare the measured building parameters and health effects.

Under the existing ICR authority, EPA has used this Questionnaire in 113 buildings to date.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) 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;

(ii) 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;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 14 minutes per response, at a cost of $4.61 per response.

Respondents/Affected Entities: Occupants of commercial and public facilities in a wide variety of fields and SIC codes.

Estimated Number of Respondents: 2520.

Frequency of Response: one-time response for 60% of respondents; 40% of respondents will complete questionnaire twice with a one-year interval between responses.

Estimated Total Annual Hour Burden: 208 hours.

Estimated Total Annualized Cost Burden: $4,104.

There are no capital or start-up costs associated with respondent burden , no operation and maintenance costs, and no purchase of services cost. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining

information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: December 17, 1998.

Mary T. Smith,

Director, Indoor Environments Division, OAR.

[FR Doc. 99–3530 Filed 2–11–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6233–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; The 1999 National Survey of Local Emergency Planning Committees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): The 1999 National Survey of Local Emergency Planning Committees. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 13, 1999.

ADDRESSES: Dan Waldeck, Office of Chemical Emergency Preparedness and Prevention, US EPA, 401 M St. SW, Washington, DC 20460. Interested persons may obtain a copy of the ICR, including survey questionnaire, without charge by calling Dan Waldeck at 202–260–4520 or via e-mail at waldeck.daniel@epamail.epa.gov or Kate Narburgh at 202–260–8247, narburgh.kate@epamail.epa.gov.

FOR FURTHER INFORMATION CONTACT: Dan Waldeck, 202–260–4520 (phone), 202–401–3448 (facsimile), waldeck.daniel@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which hold a leadership position on Local Emergency Planning Committees (LEPCs). It is anticipated that the majority of respondents will be LEPC chairs.

Title: The 1999 National Survey of Local Emergency Planning Committees. (OMB Control No. XXXX–XXXX; EPA ICR No. 1903.01.) This is a new collection.

Abstract: The Environmental Protection Agency, Office of Chemical Emergency Preparedness and Prevention (CEPPO) proposes to conduct a nationwide survey of Local Emergency Planning Committees (LEPCs). The information will be used to assess the general progress, status, and activity level of LEPCs. This collection also addresses reporting requirements under the Government Performance and Results Act (GPRA) of 1993, which stipulates that agencies focus on evaluating their program activities in terms of outputs and outcomes. This ICR is necessary to evaluate whether CEPPO is successfully providing national leadership and assistance to local communities in preparing for and preventing chemical emergencies.

The Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) introduced a fundamental change in the regulation of chemical facilities and the prevention of and preparedness for chemical accidents. This law seeks to improve emergency preparedness and reduce the risk of chemical accidents by providing information to citizens about chemical hazards in their community. EPCRA is premised on the concept that the more informed local citizens are the more involved they will become in prevention and preparedness activities. For this ''informational regulation'' to be effective, the public must receive accurate and reliable information that is easy to understand and practical to use.

EPCRA mandates the creation of LEPCs as a means for local government, law enforcement, health officials, and emergency responders to work with chemical facilities, the media, and community groups to develop formal plans for responding to chemical emergencies.

LEPC activities include:

- Receiving chemical hazards data from facilities in their community and providing this information to the local public.
- Developing local emergency response plans, which are annually reviewed, tested, and updated.
- Serving as point of contact for discussing and sharing information about hazardous substances, emergency planning, and health and environmental risk.
- Notifying the public of LEPC activities and other pertinent information.

In general, LEPCs provide local citizens an opportunity to participate actively in understanding chemical hazards, planning for emergency response, and reducing the risk of chemical emergencies. To be judged effective, LEPCs must be compliant with the requirements of EPCRA and actively carry out these responsibilities. LEPC's level of satisfaction with the information, guidance, and support they receive will heavily influence their ability to fulfill their duties. The 1999 National Survey of LEPCs will collect information to evaluate the status and activity level of these planning bodies and their satisfaction with CEPPO products and services.

This proposed information collection builds upon previous assessments conducted by CEPPO. In 1994, a nationwide survey of LEPCs revealed various strengths and weaknesses among LEPCs. Since that time, no systematic nationwide measurement of the progress of LEPCs has been conducted. Over the past five years, local emergency planning has evolved, most notably, in the amount of information that is now available to assist LEPCs in preparing for and preventing chemical emergencies. Moreover, in June 1999, this information will expand further with the addition of facility specific chemical hazards data and risk management plans made available under amendments to the Clean Air Act in 1990 (section 112(r)—the Risk Management Program Rule for the prevention of chemical accidents).

The primary goals of this research are to: (1) track the progress of LEPCs by updating the 1994 baseline data on a series of key performance indicators; and (2) probe current LEPC practices and preferences regarding several important sets of issues—including: communications with local citizens, proactive accident prevention efforts, and the effectiveness of selected CEPPO products and services.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) 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;

(ii) 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;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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.

Burden Statement: CEPPO estimates that there will be 3,300 respondents to this information collection and each respondent will spend 15 minutes completing and submitting either an on-line response form or a mail-in survey, for a total response burden of 825 hours.

There is no need for ''developing, acquiring or utilizing technology systems for the purpose of collecting, validating or verifying information,'' ''* * * disclosing and providing information,'' ''adjusting the existing ways to comply with any previous applicable instructions or requirements,'' ''training personnel to be able to respond to a collection of information,'' ''searching data sources,'' nor a need for respondents to keep records. Burden activities include only a few steps: reading instructions, reading survey questions, responding to survey questions, submitting completed questionnaire (electronically or US mail). CEPPO estimates an average cost per respondent of $6.59.

CEPPO estimates that 3,300 respondents will voluntarily respond to the national survey at a total burden of 825 hours and a total cost of $21,747.00.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: February 9, 1999.

Kathy Jones,

Associate Director, EPA/OSWER/CEPPO.

[FR Doc. 99–3532 Filed 2–11–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5499–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: : Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153. Weekly receipt of Environmental Impact Statements Filed February 1, 1999 Through February 5, 1999. Pursuant to 40 CFR 1506.9.

EIS No. 990037, Final EIS, NOA, FL, Guana, Tolomato, Matanizas, Site Designation, National Estuarine Research Reserve, Management Plan, City of Jacksonville, St. Johns and Flagler Counties, FL, Due: March 15, 1999, Contact: Jeffrey R. Benoit (301) 713–3155.

EIS No. 990038, Final EIS, DOE, ID, Advanced Mixed Waste Treatment Project, Construction and Operation, Site Selection, Idaho National Engineering and Environmental Laboratory (INEEL), Eastern Snake River Plain, ID, Due: March 15, 1999, Contact: John E. Medema (208) 526–1407.

EIS No. 990039, Final EIS, AFS, NH, Appalachian Mountain Club (AMC) Huts and Pinkham Notch Visitor Center (PNVC) Continued Operations, Special Use Permit and Possible COE Permit Issuance, White Mountain National Forest, Grafton and Coos Counties, NH, Due: March 15, 1999, Contact: Rebecca Oreskes (603) 466–2713.

Dated: February 8, 1999.

B. Katherine Biggs,

Associate Director, Office of Federal Activities.

[FR Doc. 99–3551 Filed 2–11–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5499–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 11, 1999 Through January 15, 1999 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 10, 1999 (62 FR 17856).

Draft EISs

ERP No. D–AFS–K08019–CA, Rating LO, Lucerne Valley to Big Bear Valley Transmission Line/Substation Project, Construction and Operation of Three Electrical Power Facilities: 115 kV Line between the Cottonwood Substation in Lurcerne Valley; Goldhill Substation and a new Bear Valley Substation, Special-Use-Permit and Right-of-Way Permit, San Bernardino County, CA.

Summary: EPA review has not identified any potential environmental impacts requiring changes to the proposal.

ERP No. D–BLM–J03013–UT, Rating EO2, Ferron Natural Gas Project, Proposal to Construct, Maintain and Operate a Natural Gas Transmission Pipeline, Application for Permit to Drill (APD), Special-Use-Permit and Right-of-Way Grant, Carbon and Emery Counties, UT.

Summary: EPA expressed environmental objections with the DEIS including the potential for significant visibility degradation in adjacent Class I airsheds including Captal Reef and Canyonlands National Park.

ERP No. D–NOA–B91027–00, Rating EC2, Spiny Dogfish (Squalus acanthras) Fishery Management Plan, Implementation, Northwest Atlantic Ocean, Labrador to Florida.

Summary: EPA expressed environmental concerns. The description of the spiny dogfish habitat and strategies to deal with the problem of ''ghost'' fishing from lost or abandoned gill net were inadequately addressed in the document. The document provide a suite of management alternatives to reduce fishing mortality and to ensure that overfishing does not occur.

Final EISs

ERP No. F–AFS–L61220–OR, Christy Basin Planning Area, Implementation, Regeneration Timber Harvesting, Willamette National Forest, Oakridge Ranger District, Lane County, OR.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–AFS–L65207–OR, Young'n Timber Sales, Implementation,

Willamette National Forest Land and Resource Management Plan, Middle Fork Ranger District, Lane County, OR.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–AFS–L65302–WA, Green River Road Access Requests, Easements Grant, Mt. Baker-Snoqualmie National Forest, North Bend Ranger District, King County, WA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–AFS–L65304–OR, Moose Subwatershed Timber Harvest and Other Vegetation Management Actions, Central Cascade Adaptive Management (CCAMA), Willamette National Forest, Sweet Home Ranger District, Linn County, OR.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–AFS–L65305–WA Plum Creek Checkerboard Access Project, Grant Permanent Easements, Cle Elum and Naches Ranger Districts, Wenatchee National Forest, Kittitas County, WA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–AFS–L65307–WA Sand Ecosystem Restoration Project, Implementation, Leavenworth Range District, Wenatchee National Forest, Chelan County, WA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–COE–K39047–CA Santa Clara River and Major Tributaries Project, Approval of 404 Permit and 1603 Streambed Alteration Agreement, In portions of the City Santa Clarita, Los Angeles County, CA.

Summary: EPA expressed environmental concerns that the preferred alternative did not represent the least environmentally damaging practicable alternative and requested that the Record of Decision contain commitments to permanently and systematically remove non-native vegetation from the riparian zone.

Dated: February 8, 1999.

B. Katherine Biggs,

Associate Director, Office of Federal Activities.

[FR Doc. 99–3552 Filed 2–11–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6233–7]

National Advisory Council for Environmental Policy and Technology, Title VI Implementation Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Law 92–463), the U.S. Environmental Protection Agency (EPA) gives notification of a two-day meeting of the Title VI Implementation Advisory Committee (T6AC) of the National Advisory Council for Environmental Policy and Technology (NACEPT). The Title VI of the Civil Rights Act of 1964 prohibits recipients of federal financial assistance from discriminating on the basis of race, color, or national origin in their programs or activities.

The Title VI Implementation Advisory Committee has been asked to provide advice to EPA on techniques that may be used by EPA funding recipients to operate environmental permitting programs in compliance with Title VI. The Committee is now nearing completion of its work and so will meet to reach closure on its activities, as well as to finalize its report to EPA.

DATES: The two-day public meeting will be held at the Ramada Plaza in Old Town, 901 North Fairfax Street, Alexandria, Virginia. The meeting will take place on Monday, March 1, 1999 from 8:30am to 7:00 pm, and Tuesday, March 2, 1999 from 8:30 am to 5:30 pm. The public comment session will be held from 6:00 pm to 7:00 pm on March 1st. Seating will be limited and available on a first-come, first-served basis.

Public comments may be submitted in writing or presented orally. Those wishing to submit written comments can do so at the address listed in the **ADDRESSES** section of this notice. Members of the public wishing to make an oral presentation during the public comment session will be limited to no more than five (5) minutes, and must contact Deborah Ross at 202–260–9752 no later than February 25, 1999 to reserve time. Those not having reserved time in advance may make comments during the public comment session only as time allows.

ADDRESSES: Materials or written comments may be sent to Melanie Medina-Ortiz, Designated Federal Officer, U.S. EPA (1601–F), Office of Cooperative Environmental Management, 401 M Street, SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Melanie Medina-Ortiz, Designated Federal Officer, U.S. EPA, Office of Cooperative Environmental Management, telephone 202–260–2695.

Dated: February 3, 1999

Melanie Medina-Ortiz,

Designated Federal Officer, NACEPT Title VI Implementation Advisory Committee.

[FR Doc. 99–3524 Filed 2–11–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6233–8]

Science Advisory Board; Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that several Committees of the Science Advisory Board (SAB) will meet on the dates and times described below. All times noted are Eastern Time. All meetings are open to the public, however, seating is limited and available on a first come basis. Documents that are the subject of SAB reviews are normally available from the originating U.S. Environmental Protection Agency (EPA) office and are *not* available from the SAB Office. Public drafts of SAB reports are available to the Agency and the public from the SAB office. Details on availability are noted below.

1. Environmental Modeling Subcommittee (EMS)

The Environmental Modeling Subcommittee of the Science Advisory Board's (SAB) Executive Committee, will meet Tuesday and Wednesday, February 23 and 24, 1999 in the Administrator's Conference Room (Room 1103 West Tower) at the U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. The meeting will begin at 8:30 am on February 23 and adjourn no later than 5:00 pm on February 24.

Purpose—The purpose of this meeting is to: (a) brief the SAB about the open architecture modeling paradigm being developed at EPA; (b) conduct a Consultation on the variability and uncertainty analysis efforts underway at the Agency; and, (c) conduct Advisories on EPA's Model Acceptability White Paper and the Charter for the proposed Committee for Environmental Regulatory Modeling (CREM).

SAB Consultation on Variability and Uncertainty Analysis—The Agency develops, evaluates, and applies a wide variety of highly complex environmental models. These models are used to coordinate and/or predict the environmental consequences of a wide range of activities. Frequently, they become the basis for environmental cleanup, protection, or regulation. In order to ensure the adequacy of these models in their development, evaluation and application, it is imperative that the Agency understand the variability and uncertainty associated with the results of such models. The SAB has been asked to work with EPA to help them define and implement improvements to the way in which the Agency characterizes and deals with the variability and uncertainty associated with environmental regulatory models.

The tentative charge for the SAB Consultation is to work with the Models-2000 Steering/Implementation Team (S/IT) to provide advice on the characterization of variability and uncertainty associated with the use of environmental regulatory models at EPA.

SAB Advisory on Model Acceptability White Paper and the Charter for the Proposed Committee for Environmental Regulatory Modeling (CREM)—The EPA has prepared a ''White Paper on the Nature and Scope of Issues on Adoption of Model Use Acceptability Criteria'' that proposes: (a) establishing an Agency-wide Committee on Regulatory Environmental Models (CREM); (b) developing guidance for model acceptance as well as clarifying the roles of Peer Review and Quality Assurance for model development and applications through the CREM; (c) providing information on model evaluation and use through a ''clearing house''; and, (d) reviewing through the CREM selected examples to determine progress in model evaluation. The SAB is charged to comment on:

(a) the adequacy of this approach for helping model developers explain their models clearly, articulate major assumptions and uncertainties, identify reasonable alternative interpretations, and separate scientific conclusions from policy judgments.

(b) whether the proposal is useful for models for health and for ecological risk assessments as well as for pollution prevention.

(c) the adequacy and utility of the proposal for helping decision-makers, other risk managers (e.g., assessors and their managers), and the public.

(1) understand models used in a regulatory context.

(2) evaluate the appropriate use for the results from models in decision making.

(3) understand the ''unseen'' aspects of the modeling including choices made during regulatory use and the rationale for those choices.

(d) the utility of the proposal to help those outside EPA understand the Agency's modeling goals and to help evaluate EPA's progress toward achieving those goals.

(e) the overall utility and adequacy of the proposed ''Strategy for Defining Uncertainty in Model Elements and supporting ''How to'' guidances for judging model acceptability.

For Further Information—Copies of the review documents and any background materials for the review are *not available* from the SAB. The review documents are available from the program office by contacting Mr. Johnny Pearson at (919) 541–0572; by fax at (919) 541–0445; or by e-mail at <pearson.johnnie@epa.gov>.

Any member of the public wishing further information concerning the meeting should contact Dr. Jack Fowle, Designated Federal Officer for the Environmental Models Subcommittee, Science Advisory Board (1400), Room 3702F, U.S. Environmental Protection Agency, Washington DC 20460 at (202) 260–8325; by fax (202) 260–7118; or by e-mail at <fowle.jack@epa.gov>. Anyone wishing to make an oral presentation at the meeting must contact Dr. Fowle, *in writing* no later than 4:00 pm, February 19, 1999, at the above address, fax or e-mail. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. Copies of the draft meeting agenda are available from Ms. Dorothy Clark, Committee Operations Staff at (202) 260–4126; by fax at (202) 260–7118; or by e-mail at <clark.dorothy@epa.gov>.

2. Executive Committee (EC) of the Science Advisory Board

The Science Advisory Board's (SAB) Executive Committee, will conduct a public teleconference meeting on Monday, March 8, 1999, between the hours of 11:00 am and 1:00 pm, Eastern Time. The meeting will be coordinated through a conference call connection in Room M3709 of the Mall at the U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. The public is welcome to attend the meeting physically or through a telephonic link. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Priscilla Tillery-Gadson at (202) 260–4126.

During this meeting the Executive Committee plans to review drafts from its Committees. *Anticipated* drafts include: (a) Executive Committee (EC) Subcommittee: Data from Testing of Human Subjects; (b) Ecological Processes and Effects Committee (EPEC): Review of the Agency's Index of Watershed Indicators (IWI); and (c) Research Strategies Advisory Committee (RSAC): Review of the Agency' Science Budget for FY2000. It is possible that other draft reports may be available for review at this meeting as well. Please check with Ms. Tillery-Gadson prior to the meeting to confirm any changes in the planned review schedule.

For Further Information: Any member of the public wishing further information concerning the meeting or wishing to submit comments should contact Dr. Donald G. Barnes, Designated Federal Officer for the Executive Committee, Science Advisory Board (1400), U.S. Environmental Protection Agency, Washington DC 20460; telephone (202) 260–4126; FAX (202) 260–9232; and via e-mail at: <barnes.don@epa.gov>. Copies of the relevant documents are available from the same source. The EPEC draft report is anticipated to be available on the SAB Website (http:///www.epa.gov/sab) at least one week prior to the meeting. The RSAC draft report will likely not be available until the day of the meeting, given that the RSAC public review of the Agency's budget documents will not take place until March 3–4, 1999.

3. Integrated Human Exposure Committee (IHEC)

The Integrated Human Exposure Committee (IHEC) of the Science Advisory Board (SAB) will meet on Tuesday, March 9 and Wednesday, March 10, 1999, beginning no earlier than 8:30 am and ending no later than 5:00 pm on each day. The meeting will be held at the Radisson Barceló Hotel Washington, which is located at 2121 P Street, NW., Washington, DC 20037. For directions, please call the hotel at 202–293–3100. For further information concerning the meeting, please contact the individuals listed below.

Purpose—The purpose of the meeting is to conduct two advisories and to receive three EPA briefings. The advisories will address: (a) the Building Assessment Survey and Evaluation (BASE) study; and (b) Ventilation, Indoor Air Quality and Energy Issues. The briefings will address: (a) EPA Healthy Buildings/Healthy People II; (b) the National Academy of Sciences Asthma Study; (c) and the EPA Water Consumption Report. A copy of the agenda may be obtained from Ms.

Wanda Fields by telephone (202) 260–5510, by fax (202) 260–7118 or via e-mail at: <fields.wanda@epa.gov>.

Background on Briefings—The EPA will brief the IHEC on the Agency's water consumption report on March 9, 1999. EPA is now developing estimates of water intake for the United States based on the United States Department of Agriculture's 1994–1996 Continuing Survey of Food intake by Individuals. Included in the final report will be estimates of water intake by source (municipal tap, bottled water, and other sources) with percentile distributions by age, gender, race, socioeconomic status, and geographic region and separately for pregnant and lactating women. EPA anticipates wide use of the estimates in future drinking water rule-making activities. This will be one of two briefings for standing Science Advisory Board committees in preparation for a formal SAB review of the EPA water consumption report. The other briefing is scheduled to take place during the February 1999 meeting of the SAB's Drinking Water Committee. The formal SAB review which is scheduled during the Spring of 1999 will be conducted by both the Integrated Human Exposure Committee and the Drinking Water Committee. Any technical questions regarding the EPA Water Consumption Report should be directed to Ms. Helen Jacobs, Statistician, Office of Science and Technology, Office of Water, by telephone at (202) 260–5412, by fax at (202) 260–7185, or by e-mail at <jacobs.helen@epa.gov>.

The Agency will also brief the IHEC on Healthy Buildings/Healthy People (HBHP) II on March 9, 1999. HBHP was initiated by the EPA Office of Air and Radiation and the Office of Prevention, Pesticides, and Toxic Substances in July 1997 as a response to the Agency's need to address the risks from indoor pollution. The purpose of HBHP II is to develop an Agencywide strategy and action plan to address human health indoors in the 21st century. On July 22, 1997, the IHEC consulted with the Agency during the initial stages of this process. During the briefing on March 9, 1999, the Agency will update the IHEC on the status of Healthy Buildings/Healthy People II. In a future advisory, before the completion of the Agency's final HBHP action plan, the EPA plans to have the IHEC provide advice on scientific and technical issues related to the proposed actions. Any technical questions regarding this briefing should be directed to Ms. Mary T. Smith by telephone (202) 564–9370, fax (202) 565–2039 or e-mail at <smith.maryt@epa.gov>.

The topic of the last briefing, which is also scheduled for March 9, 1999, is the NAS asthma study. The Office of Radiation and Indoor Air has provided a grant to the National Academy of Sciences/Institute of Medicine (NAS/IOM) to review the strength of the scientific evidence and the relative risk of indoor air pollutants in causing and/or triggering asthma, and the strength of the evidence regarding the effectiveness of prevention and mitigation strategies in controlling exposures to these pollutants. The NAS/IOM Committee will also determine the research needed in these areas. There may be a future IHEC advisory on EPA's follow-up to the NAS asthma study results. Any technical questions regarding this briefing should be directed to Dr. Pauline Johnston by telephone (202) 564–9425, fax (202) 565–2038 or e-mail at <johnston.pauline@epa.gov>.

a. Building Assessment Survey and Evaluation (BASE) Study Advisory

Charge—The IHEC has been asked to respond to the following Charge questions: (a) Are the proposed data analyses the most relevant?; (b) Does the Committee have advice on additional analyses that should be considered? (c) How should the analyses be prioritized (considering the need to address relevant scientific issues and to address the most important programmatic needs and guidance development)? (d) What analyses must be done? Are there any analyses that EPA must do, rather than letting independent researchers do them?; and (e) Are there similar analyses, which have been conducted on other data sets that EPA should use to inform its data analysis efforts?

Background—The Building Assessment Survey and Evaluation study is a cross-sectional multi-year study by the EPA Office of Radiation and Indoor Air. BASE was designed to define the status of indoor air quality and occupant perceptions in 100 office buildings across the country. All of the data have been collected and the Agency is seeking advice from the IHEC on the data analysis.

For Further Information—Single copies of the relevant background documents may be obtained from Ms. Laureen Burton, Chemist, Indoor Environments Division, Office of Radiation and Indoor Air, by telephone at (202) 564–9032, by fax at (202) 565–2071 or via e-mail at <burton.laureen@epa.gov>. Ms. Burton should also be contacted regarding any technical questions on these materials.

b. Ventilation/Indoor Air/and Energy Advisory

Charge—The IHEC has been asked to respond to the following Charge questions: (a) Is this project addressing the relevant issues?; (b) What additional advice does the Committee have regarding the adequacy of the analyses?; (c) Is the interpretation of the results reasonable, and do the conclusions follow logically from the results?; and (d) Does the Committee have advice on how the results can best be disseminated to the appropriate stakeholders?

Background—This project represents a modeling effort designed to assess the compatibilities and trade-offs between energy, indoor air quality, and thermal comfort objectives in the design and operation of Heating, Ventilation and Air-Conditioning (HVAC) systems in commercial buildings.

For Further Information—Single copies of the relevant background documents may be obtained from Mr. David Mudarri, Economist, Indoor Environments Division, Office of Radiation and Indoor Air, by telephone at (202) 564–9053, by fax at (202) 565–2071 or via e-mail at <mudarri.david@epa.gov>. Mr. Mudarri should also be contacted regarding any technical questions on these materials.

Public Comments—Anyone wishing to make an oral presentation at the meeting must contact Ms. Roslyn Edson, Designated Federal Officer for the IHEC, in writing, no later than 5:00 p.m. Eastern Time on March 2, by fax (202) 260–7118, or via e-mail: <edson.roslyn@epa.gov>. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not repeat previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. This time may be reduced at the discretion of the SAB, depending on meeting circumstances. Oral presentations at teleconferences will normally be limited to three minutes per speaker or organization. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the

meeting date will normally be provided to the committee at its meeting. Written comments, which may be of any length, may be provided to the relevant committee or subcommittee up until the time of the meeting.

The Science Advisory Board

Information concerning the Science Advisory Board, its structure, function, and composition, may be found in The FY1998 Annual Report of the Staff Director which is available from the SAB Committee Evaluation and Support Staff (CESS) by contacting US EPA, Science Advisory Board (1400), Attention: CESS, 401 M Street, SW, Washington, DC 20460 or via fax (202) 260–1889. Additional information concerning the SAB can be found on the SAB Home Page at: http://www.epa.gov/sab.

Copies of SAB prepared final reports mentioned in this **Federal Register** Notice may be obtained immediately from the SAB Home Page or by mail/fax from the SAB's Committee Evaluation and Support Staff at (202) 260–4126, or via fax at (202) 260–1889. Please provide the SAB report number when making a request.

Meeting Access

Individuals requiring special accommodation at this meeting, including wheelchair access, should contact the appropriate DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: February 4, 1999.

John R. Fowle, III,

Acting Staff Director Science Advisory Board.

[FR Doc. 99–3525 Filed 2–11–99; 8:45 am]

BILLING CODE: 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00585; FRL–6062–7]

State FIFRA Issues Research and Evaluation Group (SFIREG) Water Quality and Pesticide Disposal Working Committee; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) Water Quality and Pesticide Disposal Working Committee will hold a 2-day meeting, February 22 and 23, 1999. This notice announces the location and times for the meeting and sets forth the tentative agenda topics. The meetings are open to the public.

DATES: The SFIREG Working Committee on Water Quality and Pesticide Disposal will meet on Monday, February 22, 1999, from 8:30 a.m. to 5:00 p.m. and Tuesday, February 23, 1999, from 8:30 a.m. to 12:00 noon.

ADDRESSES: The meeting will be held at: The Ronald Reagan National Airport Doubletree Hotel, 300 Army Navy Drive, Arlington-Crystal City, VA.

FOR FURTHER INFORMATION CONTACT: By mail: Elaine Y. Lyon, Field and External Affairs Division, Office of Pesticide Programs (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 1921 Jefferson Davis Highway, Arlington-Crystal City, VA 22202, Crystal Mall 2 (CM #2), (703) 305–5306, (fax) (703) 308–1850; e-mail: lyon.elaine@epa.gov.

SUPPLEMENTARY INFORMATION: The tentative agenda of the SFIREG Working Committee on Water Quality and Pesticide Disposal includes the following:

1. Consumer labeling initiative.
2. Publicly owned Treatment Works (POTW) compliance issues.
3. Pesticide degradates in water.
4. Conditional registration.
5. Draft protocol on national monitoring of pesticides in drinking water.
6. Atmospheric deposition of pesticides.
7. Pesticide management plan status.
8. Container regulation status.
9. Proposed project on pesticide collection.
10. Office of Pesticide Programs activities update.
11. Office of enforcement and compliance assurance update.
12. Working committee reports.
13. Other topics as appropriate.

List of Subjects

Environmental protection.

Dated: February 5, 1999.

Anne E. Lindsay,

Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 99–3560 Filed 2–11–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6233–4]

New York Marine Sanitation Device Standard; Final Affirmative Determination:

Notice is hereby given that the Regional Administrator, Environmental Protection Agency (EPA) Region II has affirmatively determined, pursuant to section 312(f) of Pub. L. 92–500, as amended by Pub. L. 95–217 and Pub. L. 100–4 (the Clean Water Act), that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the harbors and creeks of the Peconic Estuary from the Sag Harbor Village Line to Montauk Point, East Hampton, New York. The harbors and creeks included in this tentative determination are Northwest Creek, Three Mile Harbor, Hog Creek, Accabonac Harbor, Napeague Harbor and Lake Montauk.

This petition was made by the New York State Department of Environmental Conservation (NYSDEC) in cooperation with the New York State Department of State and the Town of East Hampton. The State of New York has certified that greater protection of the surface water in the harbors and creeks of the Peconic Estuary in the Town of East Hampton is required than the applicable federal standards provide. Upon receipt of this affirmative determination in response to this petition, NYSDEC will completely prohibit the discharge of sewage, whether treated or not, from any vessel in Northwest Creek, Three Mile Harbor, Hog Creek, Accabonac Harbor, Napeague Harbor and Lake Montauk in accordance with section 312(f)(3) of the Clean Water Act and 40 CFR 140.4(a). This prohibition is part of a comprehensive approach to water quality management aimed at preventing water quality impairments and improving overall water quality in the harbors and creeks. This designation is part of a wider effort at controlling non-point source pollution including problems associated with stormwater runoff and residential septic systems. Notice of the Receipt of Petition and Tentative Determination was published in the **Federal Register** on November 5, 1998. Comments on the Receipt of Petition and Tentative Determination were accepted during the comment period which closed on December 5, 1998. Written comments were received from the following:

1. Ms. Catherine Lester, Supervisor, Town of East Hampton, 159 Pantigo Road, East Hampton, New York 11937
2. Ms. Margaret Hardy, The Accabonac Protection Committee, 956 Springs Fireplace Road, East Hampton, New York 11937
3. Mr. Kevin McAllister, Peconic Baykeeper, Save the Peconic Bays, 2560 Paradise Shores Road, Southold, New York 11971

4. Mr. Clete Galasso and Mr. Lester Black, Association of Marine Industries, PO Box 164, Shoreham, New York 11786

The individuals expressed their support and the support of the organizations, which they represent, for the No Discharge Areas (NDAs). Two individuals commented that the NDAs will complement the Town of East Hampton's extensive effort to control stormwater runoff and other non-point pollutants entering surface waters from upland sources. The individuals also support a public education and outreach program that will be conducted to inform the boating public about the NDAs and the associated requirements. EPA commends both these efforts. Another individual commented that while Accabonac Harbor, Hog Creek, Napeague Harbor and Northwest Creek do not afford stationary pumpout facilities, the facilities in nearby waters and the presence of pumpout boats provide adequate facilities for boaters. EPA concurs. Another individual stressed that the key to a successful NDA is public education, visible signage and free pump-out boats. The determination is based upon the number and availability of pump-out facilities available to the boating community, whether these facilities are stationary, portable or situated on boats. EPA has determined that there is an adequate number of available pump-outs to service the number of boats estimated in the subject harbors and creeks. It should be noted that two comment letters were postmarked after the comment period closed. These comments were still taken into consideration and included as part of this final determination.

The No Discharge Areas (NDAs) lie within the Town of East Hampton, Suffolk County, New York. The boundaries of the NDAs will be the mouth of each individual creek or harbor and all the waters within the following harbors and creeks:

Name of harbor or creek	Latitude	Longitude
Northwest Creek.	N 41° 00.8′	W 72° 15.3′
Three Mile Harbor.	N 41° 03.1′	W 72° 11.3′
Hog Creek	N 41° 03.1′	W 72° 08.2′
Accabonac Harbor.	N 41° 01.5′	W 72° 18.2′
Napeague Harbor—west.	N 41° 00.8′	W 72° 03.7′
Napeague Harbor—east.	N 41° 01.1′	W 72° 03.3′
Lake Montauk	N 41° 04.7′	W 72° 56.4′

Information submitted by the State of New York and the Town East Hampton shows that there are ten existing pump-out facilities available and that three pumpout boats service vessels in the NDA. Harbor Marina, located in Three Mile Harbor, operates a portable pumpout. The pumpouts are available from 8:30 a.m. to 4:30 p.m. daily and the fee is $25. Town Dock—Gann Road, located in Three Mile Harbor, operates a stationary pumpout and a portable pumpout. The pumpouts, which are free to use, are available self-service 24 hours a day and from 8 a.m. to 4 p.m. with an attendant on duty. Maidstone Harbor Marina, located in Three Mile Harbor, operates a stationary pumpout. The pumpout is available on weekends from May 1 through October 31 from 9 a.m. to 5 p.m and the fee is $20. East Hampton Point Marina, located in Three Mile Harbor, operates a portable pumpout. The pumpout is available from 8:30 a.m. to 4 p.m. from May through October. The fee is $5. Shagwong Marina, located in Three Mile Harbor, operates a portable pumpout. The pumpout is available from 9 a.m. to 5 p.m. daily and the fee is $5. Town Dock—Star Island, located in Montauk Harbor, operates two stationary pumpout facilities. These facilities are available on a self-service basis 24 hours a day and operated by an attendant from 8 a.m. through 4 p.m. Montauk Sportsman's Dock, located in Montauk, operates a portable pumpout. The pumpout is available from 9 a.m. through 4 p.m. daily. Gone Fishing Marina, located in Montauk Harbor, operates a portable pumpout unit. The unit is available from 8 a.m. through 5 p.m. and the fee is $5. Darenberg Marine operates two pumpout boats in Three Mile Harbor and Lake Montauk, and will serve any harbor on an as-needed basis. Darenberg Marine can be reached at 329–2739 or VHF channel 73. The boat located on Three Mile Harbor operates from 8 a.m. through 2 p.m. on Tuesday and Wednesday, and from 7 a.m. through 12 p.m. Friday, Saturday and Sunday. The boat located on Lake Montauk operates from 2:30 p.m. through 7 p.m. on Tuesday and Wednesday, and from 12:30 p.m. through 7 p.m. Friday, Saturday and Sunday. Darenberg Marine charges a fee of $10 per boat. The Town of East Hampton operates a pumpout boat in Three Mile Harbor and does not charge for the service. East Hampton operates the boat 40 hours per week and can be contacted at 267–8688 or VHF Channel 73.

Draft restrictions at three of the marinas would exclude a certain number of the larger vessels from accessing the pumpouts at these three marinas. Montauk Sportsman's Dock has a water depth of 6 feet; it is estimated that 5% of the vessels would be excluded. Captain's Cove Marina has a water depth of 5 feet; it is estimated that 10% of the vessels would be excluded. Gone Fishing Marina has a water depth of 6 feet; it is estimated that 5% of the vessels would be excluded. For these excluded vessels, there are seven other pumpouts and three pumpout boats available for their use.

Vessel waste generated from the pump-out facilities operated by the Town of East Hampton is conveyed to a storage tank at the municipal scavenger waste treatment plant. The waste is hauled from the scavenger plant to the Bergen Point Wastewater Treatment Plant. With two exceptions, the other marinas empty their pumpouts into large storage tanks ranging in size from 500 gallons to 2,376 gallons. A certified hauler collects, transports and disposes of the sewage in accordance with all Federal, State and local laws. The two exceptions are Harbor Marina, which uses an on-site Bio-Robi septic system, and Captain's Cove Marina, which does not have a pumpout facility and instead uses a certified waste hauler to pumpout a vessel on request.

According to the petition, the slip and mooring capacity for each harbor or creek is as follows:

Name of harbor or creek	Number of slips/moorings/docks
Northwest Creek	21
Three Mile Harbor	1067
Accabonac Harbor	56
Hog Creek	195
Napeague Harbor	20
Lake Montauk	1274
Total	2577

The New York State Department of State conducted a survey of recreational vessels using aerial photography during August 1995 for the New York State Clean Vessel Act Plan. Analysis of the photographs provided information on the total numbers of vessels by water body. Data indicates the following peak season vessel population in the NDAs in East Hampton:

Name of harbor or creek	Number of vessels
Northwest Creek	(*)
Three Mile Harbor	734
Accabonac Harbor	38
Hog Creek	(*)
Napeague Harbor	56

Name of harbor or creek	Number of vessels
Lake Montauk	883
Total	1711

*No data available.

Information regarding vessel population based on length shows that 63% of the boats are less than 40 feet and 37% of the vessels are 40 feet or greater in length. These percentages are based on a survey of overnight and long term occupancy and omitted marinas with recreational small crafts. Based on the number and size of boats, and using various methods to estimate the number of holding tanks, it is estimated that 5 to 8 pumpouts are needed to service the vessel population in the NDAs. Currently, ten pumpouts and three pumpout boats exist in the NDAs.

The EPA hereby makes a final affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for Northwest Creek, Three Mile Harbor, Hog Creek, Accabonac Harbor, Napeague Harbor and Lake Montauk in the Town of East Hampton, New York. This final affirmative determination will result in a New York State prohibition of any sewage discharges from vessels in Northwest Creek, Three Mile Harbor, Hog Creek, Accabonac Harbor, Napeague Harbor and Lake Montauk.

Dated: January 28, 1999.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 99–3518 Filed 2–11–99; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the March 11, 1999 regular meeting of the Farm Credit Administration Board (Board) will not be held. The Board will hold a special meeting at 2:00 p.m. on Tuesday, March 23, 1999. An agenda for that meeting will be forthcoming.

FOR FURTHER INFORMATION CONTACT: Vivian L. Portis, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: February 9, 1999.

Vivian L. Portis,

Secretary,

Farm Credit Administration Board.

[FR Doc. 99–3697 Filed 2–10–99; 3:22 pm]

BILLING CODE 6705–01–P

FEDERAL MARITIME COMMISSION

Notice of Request for Public Comments Regarding Extensions to Existing OMB Clearances

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: The FMC is preparing a submission to the Office of Management and Budget (OMB) for continued approval of the following information collection (extension with no changes) under the provisions of the Paperwork Reduction Act of 1995, as amended (44 U.S.C. Chapter 35): OMB No. 3072–0012 (Security for the Protection of the Public and Related Application Form FMC–131). Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval and will become a matter of public record.

DATES: Comments must be submitted on or before April 13, 1999.

ADDRESSES: Send comments to: Edward P. Walsh, Managing Director, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573, (Telephone: (202) 523–5800).

FOR FURTHER INFORMATION CONTACT: Send requests for copies of the current OMB clearances to: George D. Bowers, Director, Office of Information Resources Management, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573, (Telephone: (202) 523–5834).

SUPPLEMENTARY INFORMATION:

Security for the Protection of the Public and Application Form FMC–131—OMB Approval Number 3072–0012 Expires July 31, 1999

Abstract: Sections 2 and 3 of Public Law 89–777 (46 U.S.C. app. 817(d) and (e)) require owners or charterers of vessels with 50 or more passenger berths or stateroom accommodations and embarking passengers at United States ports and territories to establish their financial responsibility to meet liability incurred for death or injury and to indemnify passengers in the event of nonperformance of transportation. 46 CFR Part 540 implements Public Law 89–777 and specifies the amount of financial responsibility coverages required of such owners or charterers.

Needs and Uses: The information will be used by the Commission's staff to ensure that passenger vessel owners and charterers have evidenced financial responsibility to indemnify passengers and others in the event of nonperformance or casualty.

Frequency: Financial information is furnished quarterly, semi-annually or annually. Other information is submitted as circumstances may warrant.

Type of Respondents: The types of respondents are owners, charterers and operators of passenger vessels with 50 or more passenger berths that embark passengers from U.S. ports or territories.

Number of annual respondents: The Commission estimates an annual respondent universe of 60.

Estimated time per response: The time per response ranges from .5 to 6 hours for complying with the regulations and 8 hours for completing Application Form FMC–131. The total average time for both requirements for each respondent is 34.66 manhours.

Total Annual Burden: The Commission estimates the total manhour burden at 2,080 manhours.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–3436 Filed 2–11–99; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Interim Tribal TANF Data Report.

OMB No.: 0970–0176.

Description: This information is being collected to meet the statutory requirements of section 411 of the Social Security Act and section 116 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. It consists of disaggregated demographic and program information that will be used to determine participation rates and other statutorily required indicators for the Tribal Temporary Assistance for Needy Families (Tribal TANF) program.

Respondents: State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Interim Tribal TANF Data Report	18	4	451	32,472

Estimated Total Annual Burden Hours: 32,472.

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, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment:

OMB is required to make a decision concerning the collection of information between 30 to 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, N.W., Washington, D.C. 20503, Attn: Lori Schack.

Dated: February 8, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99–3475 Filed 2–11–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0364]

Agency Information Collection Activities; Announcement of OMB Approval; Recordkeeping for Electronic Products, Specific Product Requirements; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of January 5, 1999 (64 FR 516). The document announced that a collection of information entitled ''Reporting and Recordkeeping for Electronic Products: Specific Product Requirements'' has been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995. The document was inadvertently published with an incorrect docket number. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Silvia R. Fasce, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

In FR Doc. 99–71, appearing on page 516 in the **Federal Register** of Tuesday, January 5, 1999, the following correction is made:

On page 516, in the first column, ''[Docket No. 98N–0213]'' is corrected to read ''[Docket No. 98N–0364]''.

Dated: February 5, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–3438 Filed 2–11–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0132]

FDA Modernization Act of 1997: Guidance on Medical Device Tracking; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the revised final guidance entitled ''Guidance on Medical Device Tracking.'' It replaces the previous final guidance issued on March 4, 1998. This revised final guidance provides guidelines to manufacturers and distributors concerning their responsibilities for medical device tracking under the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the revised final guidance entitled ''Guidance on Medical Device Tracking'' to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments on ''Guidance on Medical Device Tracking'' to the contact person (address below). See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Chester T. Reynolds, Center for Devices and Radiological Health (HFZ–300), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4618.

SUPPLEMENTARY INFORMATION:

I. Background

Section 211 of FDAMA (Pub. L. 105–115) amended the tracking provisions of section 519(e) of the act (21 U.S.C. 360i(e)) to authorize FDA, at its discretion, to issue orders that require a manufacturer to track a class II or class III device if the failure of the device would be reasonably likely to have serious adverse health consequences, or the device is intended to be implanted in the human body for more than 1 year, or is life sustaining or life supporting and used outside a device user facility. The FDAMA tracking provisions became effective on February 19, 1998.

On January 15, 1998, FDA conducted a public meeting to discuss FDAMA changes in section 519(e) of the act. Comments were received concerning factors FDA should consider in determining what devices are subject to FDAMA tracking requirements. On February 11, 1998, FDA issued tracking orders, under the revised FDAMA tracking provisions which became effective on February 19, 1998, to manufacturers of devices that were subject to tracking previously under the Safe Medical Devices Act of 1990 (the SMDA) provisions (21 CFR 821.20(b)(1), (b)(2), and (c)). Additionally, tracking orders were issued to manufacturers of intraocular lenses and arterial stents that had not been subject to tracking under the SMDA provisions (63 FR

10638, March 4, 1998). Tracking orders were also issued on December 14, 1998, to tissue banks that manufacture and distribute dura mater.

On March 4, 1998, FDA announced the availability of the ''Guidance on Medical Device Tracking'' (63 FR 10638 at 10640). This final draft guidance was issued as a Level 1 guidance under the agency's Good Guidance Practices (GGP's) (62 FR 8961, February 27, 1997). The guidance explained: (1) Revised tracking criteria in section 519(e) of the act, as amended by FDAMA; (2) patients' rights to refuse information disclosure; (3) FDA's discretion in issuing tracking orders; (4) FDA's review and reconsideration of devices subject to FDAMA tracking criteria; and (5) the regulatory application of tracking requirements in 21 CFR part 821.

Through the January 1998 meeting and the March 1998 **Federal Register** notices, FDA solicited public comment on what factors in addition to the revised statutory criteria the agency should consider in exercising its discretion to require, or not to require, the tracking of devices. As a consequence of these comments, FDA believes it should consider the following factors, as ascertained from available premarket and postmarket information, in determining whether to issue a tracking order for a particular type of device: (1) Likelihood of sudden, catastrophic failure; (2) likelihood of significant adverse clinical outcome; and (3) need for prompt professional intervention.

This revised final guidance replaces the March 1998 guidance and reflects the factors FDA may consider in determining which devices should be tracked. The list of tracked devices identified in the March 1998 guidance also has been revised in this final guidance, based on the additional factors noted previously and identifies 14 categories of devices that have been released from FDAMA tracking requirements under the tracking requirement rescission orders issued by FDA in August 1998. It also identifies the 16 categories of devices currently subject to tracking orders. The agency added one category, dura mater, which was the subject of tracking orders issued by the agency which became effective on December 14, 1998. The remaining 15 device types were the subject of tracking orders issued by the agency which became effective on February 19, 1998. Upon further review and reconsideration, FDA has determined that these particular devices meet the statutory tracking criteria under section 519(e) of the act and, upon failure, would likely exhibit the factors noted previously that FDA believes warrants their tracking. The agency may add or remove devices from the list of tracked devices as a result of its review of premarket applications, recall data, medical device reporting, inspections, petitions, postmarket surveillance, or other information.

II. Significance of Guidance

This guidance document represents the agency's current thinking on medical device tracking requirements, as amended by FDAMA. 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 applicable statute, regulations, or both.

The agency has adopted GGP's, which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961). This guidance document is issued as a Level 1 guidance consistent with GGP's.

III. Electronic Access

In order to receive ''Guidance on Medical Device Tracking'' via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (169) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the revised final guidance may also do so using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the WWW. Updated on a regular basis, the CDRH home page includes ''Guidance on Medical Device Tracking,'' device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at ''http://www.fda.gov/cdrh''. ''Guidance on Medical Device Tracking'' will be available at ''http://www.fda.gov/cdrh/ochome.html''.

IV. Comments

Interested persons may, at any time, submit to the contact person (address above) written comments regarding this guidance. Such comments will be considered when determining whether to amend the current guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 3, 1999.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 99–3437 Filed 2–11–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1064–N]

RIN 0938–AJ38

Medicare Program; March 15, 1999, Meeting of the Practicing Physicians Advisory Council

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of a meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Practicing Physicians Advisory Council (the Council) on March 15, 1999. This meeting is open to the public.

The Council is mandated by section 1868 of the Social Security Act and meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services.

DATES: The meeting is scheduled for March 15, 1999, from 8:30 a.m. until 5 p.m., e.s.t.

ADDRESSES: The meeting will be held in Room 800, 8th Floor, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Aron Primack, M.D., M.A., F.A.C.P., Executive Director, Practicing Physicians Advisory Council, Room 435–H, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC, 20201, (202) 690–7874. News media representatives should contact the HCFA Press Office (202) 690–6145.

SUPPLEMENTARY INFORMATION: The Secretary of the Department of Health and Human Services (the Secretary) is mandated by section 1868 of the Social Security Act to appoint a Practicing Physicians Advisory Council (the Council) based on nominations submitted by medical organizations representing physicians.

The Council meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the consultation must occur before publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of HCFA no later than December 31 of each year.

The Council consists of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under Medicare or Medicaid in the previous year. Members of the Council include both participating and nonparticipating physicians, as well as physicians practicing in rural and underserved urban areas. At least 11 members must be doctors of medicine or osteopathy authorized to practice medicine and surgery by the States in which they practice.

Members have been invited to serve for overlapping 4-year terms. In accordance with section 14 of the Federal Advisory Committee Act, terms of more than 2 years are contingent upon the renewal of the Council by appropriate action before the end of the 2-year term.

The current members are: Jerold M. Aronson, M.D.; Richard Bronfman, D.P.M. (renominated—pending selection); Wayne R. Carlsen, D.O.; Gary C. Dennis, M.D.; Mary T. Herald, M.D.; Ardis D. Hoven, M.D.; Sandral Hullett, M.D.; Jerilynn S. Kaibel, D.C.; Marie G. Kuffner, M.D.; Marc Lowe, M.D. (renominated—pending selection); Derrick K. Latos, M.D.; Sandra B. Reed, M.D.; Susan Schooley, M.D.; Maisie Tam, M.D.; and Kenneth M. Viste, Jr., M.D. The chairperson is Kenneth M. Viste, Jr., M.D. The vice chairperson is Marie G. Kuffner, M.D.

The next meeting of the Council is scheduled for March 15, 1999, from 8:30 a.m. until 5 p.m., e.s.t. This meeting is open to the public and will be held in Room 800, 8th Floor, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington DC, 20201. The meeting is open to the public, but attendance is limited to the space available.

At this meeting the Council members will be updated on the status of items discussed at previous meetings. In addition, new members will be sworn in to serve on the Council. The agenda will provide for discussion and comment on the following topic:

Physicians Regulatory Issues Team (PRIT) Testimony is requested from physicians and medical organizations representing physicians regarding the regulatory requirements placed on practicing physicians. Testimony should address methods of improving a physician's administrative process, while maintaining the integrity of Federal administrative systems.

Individual physicians or medical organizations that represent physicians that wish to make 5-minute oral presentations on the agenda issue should contact the Executive Director by 12 noon, February 19, 1999, to be scheduled. The number of oral presentations may be limited by the time available. A written copy of the presenters' oral remarks should be submitted to the Executive Director no later than 12 noon, February 26, 1999, for distribution to the Council members.

Any interested member of the public may submit written comments to the Executive Director and Council members for review. Comments should be received by the Executive Director by 12 noon, February 26, 1999, for distribution.

(Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Public Law 92–463 (5 U.S.C. App. 2, section 10(a)); 45 CFR Part 11)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 1, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 99–3558 Filed 2–11–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee G—Education.

Date: March 10–12, 1999.

Time: 12:00 pm to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Ave. NW., Washington, DC 20007.

Contact Person: Harvey Stein, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, Rockville, MD 20892, 301–496–7481.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.298, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 5, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–3478 Filed 2–11–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, SBIR Topic 173.

Date: February 24, 1999.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate contract proposals.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: C.M. Kerwin, PhD, Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard/EPN–609, Rockville, MD 20892–7405, 301/496–7421.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 5, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–3479 Filed 2–11–99; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Initial Review Group, Genome Research Review Committee.
Date: March 5, 1999.
Time: 1:00 pm to 4:00 pm.
Agenda: To review and evaluate grant applications.
Place: National Human Genome Research Institute, National Institutes of Health, Building 38A, Room 609, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Ken D. Nakamura, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: February 5, 1999.

LaVerne Y. Stringfield,

Committee Management Office, NIH.

[FR Doc. 99–3477 Filed 2–11–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel.
Date: March 23–24, 1999.
Time: 8:30 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Rudy O. Pozzatti, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: February 5, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–3480 Filed 2–11–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Minority Programs Review Committee, Marc Subcommittee A.
Date: February 18–19, 1999.
Time: 8:30 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Natcher Building, Conference Room B, 45 Center Drive, Bethesda, MD 20892.
Contact Person: Richard I. Martinez, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–19G, Bethesda, MD 20892–6200, (301) 594–2849.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Development Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 5, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc 99–3481 Filed 2–11–99; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Sexually Transmitted Diseases Cooperative Research Centers.

Date: March 3–5, 1999.

Time: 9:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Anna Ramsey-Ewing, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 4C37, 6003 Executive Boulevard MSC 7610, Bethesda, MD 20892–7610, 301–435–8536.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 5, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–3482 Filed 2–11–99; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personally privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB-D (C1)B.

Date: February 18, 1999.

Time: 1:00 p.m. to Adjournment.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Natcher Bldg., 45 Center Drive, room 6AS–37, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Richard A. Pledger, PhD, Scientific Review Administrator, 45 Center Drive, MS C 6600.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 5, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–3483 Filed 2–11–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Disease Initial Review Group, Diabetes, Endocrinology and Metabolic Diseases B Subcommittee, GRB–B.

Date: March 18–19, 1999.

Time: March 18, 1999, 8:30 am to Adjournment.

Agenda: To review and evaluate grant applicants.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Building 45, Bethesda, MD 20892.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Kidney, Urologic and Hematologic Diseases D Subcommittee, GRB–D.

Date: March 25–26, 1999.

Time: March 25, 1999, 8:00 am to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ann A. Hagan, PhD, Chief, Review Branch, Review Branch, DEA, NIDDK, National Institutes of Health, Building 45, Bethesda, MD 20892, (301) 594–8886.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Digestive Diseases and Nutrition C Subcommittee, GRB–C.

Date: April 7–8, 1999.

Time: April 7, 1999, 8:00 am to adjournment.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Dan Matsumoto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Building 45, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 5, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–3484 Filed 2–11–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1–GRB5–C3B.

Date: March 18, 1999.

Time: 8:00 AM to Adjournment.

Agenda: To review and evaluate contract proposals.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Francisco O. Calvo, PhD, Chief, Special Emphasis Panel, Review Branch, DEA, NIDDK, National Institutes of Health, Room 6AS37D, Bldg. 45, Bethesda, MD 20892, 301–594–8897.

(Catalog of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 5, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–3485 Filed 2–11–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial properly such as patentable material, and personal information concerning individuals associated with the great applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Review of Grant Applications.

Date: March 10–12, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Hagit S David, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 4C03, 6003 Executive Boulevard MSC 7610, Bethesda, MD 20892–7610, 301–402–4596.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 5, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–3486 Filed 2–11–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases: Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Asthma and Allergic Diseases Research Center.

Date: March 10–12, 1999.

Time: 8:30 am to 5:30 pm.

Agenda: to review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Priti Mehrotra, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 4C14, 6003 Executive Boulevard MSC 7610, Bethesda, MD 20892–7610, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 5, 1999.

LaVerne Y. Stringfield,

Committee Management Office, NIH.

[FR Doc. 99–3487 Filed 2–11–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commerical property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Human Immunology Centers of Excellence.

Date: March 9–11, 1999.

Time: 9:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Stanley C. Oaks, Jr., PhD, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 4C06, 9000 Rockville Pike MSC 7610, Bethesda, MD 20892–7610, 301 496–7042, so14s@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 5, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–3488 Filed 2–11–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Review of Unsolicited Applications.

Date: March 9, 1999.

Time: 8:30 am to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Ramada, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Vassil S. Georgiev, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 4C04, 6003 Executive Boulevard MSC 7610, Bethesda, MD 20892–7610, 301–496–8206.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 5, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–3489 Filed 2–11–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Endocrinology and Reproductive Sciences Initial Review Group, Endocrinology Study Section.

Date: February 16–17, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Syed M. Amir, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, (301) 435–1043.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–1FCN5–01.

Date: February 16–17, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, Washington, DC 20036.

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–BDCN–3(01).

Date: February 17–19, 1999.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate applications.

Place: Swissotel Washington, The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: David L. Simpson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5192, MSC 7846, Bethesda, MD 20892, (301) 435–1278.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biophysical and Chemical Sciences Initial Review Group Medicinal Chemistry Study Section.

Date: February 17–19, 1999.

Time: 8:30 am to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Ronald J. Dubois, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 4156, MSC 7806, Bethesda, MD 20892, (301) 435–1722 duboisr@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 17–19, 1999.

Time: 3:00 pm to 11:00 am.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn on the Lane, 328 West Lane Avenue, Columbus, OH 43201.

Contact Person: Houston Baker, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7854, Bethesda, MD 20892, 301–435–1175, bakerh@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 17, 1999.

Time: 7:00 pm to 8:30 pm.

Agenda: To review and evaluate grant applications.

Place: La Jolla Cove Suites, La Jolla, CA 92037.

Contact Person: Lee Rosen, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Diagnostic Radiology Special Emphasis Panel.

Date: February 17, 1999.

Time: 7:30 pm to 10:00 pm.

Agenda: To review and evaluate grant applications.

Place: La Jolla Cove Suites, La Jolla, CA 92037.

Contact Person: Eileen W. Bradley, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–1179.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphais Panel.

Date: February 18–19, 1999.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Gopal C. Sharma, DVM, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7816, Bethesda, MD 20892, (301) 435–1783.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biochemical Sciences Initial Review Group, Phsiological Chemistry Study Section.

Date: February 18–19, 1999.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Baltimore, On the Inner Harbor, 300 Light Street, Baltimore, MD 21202.

Contact Person: Richard Panniers, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, 7842, Bethesda, MD 20892, (301) 435–1741.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–DMG (02).

Date: February 18–19, 1999.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: La Jolla Cover Suites, La Jolla, CA 92037.

Contact Person: Lee Rosen, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 18–19, 1999.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Mary Custer, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7850, Bethesda, MD 20892, (301) 435–1164.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Surgery, Radiology and Bioengineering Initial Review Group, Diagnostic Radiology Study Section.

Date: February 18–19, 1999.

Time: 8:00 am to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: St James Hall, La Jolla, CA 92037.

Contact Person: Eileen W. Bradley, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–1179.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Nutritional and Metabolic Sciences Initial Review Group, Nutrition Study Section.

Date: February 18–19, 1999.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Chevy Chase Pavilion, 4300 Military Road, NW, Washington, DC 20015.

Contact Person: Sooja K. Kim, PhD, RD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7892, Bethesda, MD 20892, (301) 435–1780.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biophysical and Chemical Sciences Initial Review Group, Biophysical Chemistry Study Section.

Date: February 18–19, 1999.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, N.W., Washington, DC 20007.

Contact Person: Donald Schneider, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892, (301) 435–1727.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Surgery, Radiology and Bioengineering Initial Review Group, Surgery and Bioengineering Study Section.

Date: February 18–19, 1999.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Ave, N.W., Washington, DC 20007.

Contact Person: Teresa Nesbitt, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, (301) 435–1172.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–MDCN–1.

Date: February 18–19, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Wyndham Bristol Hotel, 2430 Pennsylvania Ave, NW, Washington, DC 20037.

Contact Person: Carl D. Banner, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892, (301) 435–1251, bannerc@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Immunological Sciences Initial Review Group, Experimental Immunology Study Section.

Date: February 18–19, 1999.

Time: 8:30 am to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holidy Inn Georgetown, 2101 Wisconsin Ave, Washington, DC 20007.

Contact Person: Calbert A. Laing, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, (301) 435–1221.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biophysical and Chemical Sciences Initial Review Group, Molecular and Cellular Biophysics Study Section,

Date: February 18–19–, 1999.

Time 8:30 am to 6:00 pm.

Agenda: To review and evaluate grant applications.

Place: Hotel Sofitel, 1914 Connecticut Ave, NW, Washington, DC 20009.

Contact Person: Nancy Lamontagne, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892, (301) 435–1726.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Initial Review Group, Visual Sciences A Study Section.

Date: February 18–19, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Luigi Giacometti, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7850, Bethesda, MD 20892, (301) 435–1246.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 18–19, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, 1250 22nd Street, NW., Washington, DC 20037.

Contact Person: Jay Cinque, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Initial Review Group, Experimental Therapeutics Subcommittee.

Date: February 18–19, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Arlington, 1325 Wilson Blvd., Arlington, VA 22209.

Contact Person: Philip Perkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435–1718.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cell Development and Function Initial Review Group, Cellular Biology and Physiology Subcommittee 2.

Date: February 18–19, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Bethesda, MD 20814.

Contact Person: Gerhard Ehrenspeck, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5138, MSC 7840, Bethesda, MD 20892, (301) 435–1022, ehrenspeckg@nih.csr.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Genetic Sciences Initial Review Group, Genome Study Section.

Date: February 18–19, 1999.

Time: 9:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Cheryl M. Corsaro, PhD, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 6172, MSC 7890, Bethesda, MD 20892, (301) 435–1045.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 5, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–3490 Filed 2–11–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Statement of Organization, Functions, and Delegations of Authority

Part N, National Institutes of Health, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 63 FR 8656, February 20, 1998, and redesignated from Part HN as Part N at 60 FR 56605, November 9, 1995), is amended as set forth below to reflect the transfer of the Laboratory of Diagnostic Radiology Research from the Office of Intramural Research (NA4, formerly HNA4) to the Clinical Center (NJ, formerly HNJ).

Section N–B, Organization and Functions, is amended as follows: Under the heading *Clinical Center (NJ, formerly HNJ), Office of the Associate Director for Radiologic and Imaging Sciences (NJ5, formerly HNJ5),* the following is inserted:

Laboratory of Diagnostic Radiology Research (NJ55, formerly HNJ55). Directs a training program promoting clinical and basic research in medical imaging and related fields with two main objectives: (1) to train U.S. or permanent resident radiologist and nuclear medicine physicians and scientists designed to teach techniques and skills used to perform ''imaging research'' not readily available at other academic institutions; and (2) to focus its efforts in the areas of magnetic resonance imaging, magnetic resonance spectroscopy, molecular imaging, image processing and the development of new approaches in order to achieve these goals.

Delagations of Authority Statement: All delegations and redelegations of authority to offices and employees of NIH which were in effect immediately prior to the effective date of this reorganization and are consistent with this reorganization shall continue in effect, pending further redelegation.

Dated: January 27, 1999.

Harold Varmus,

Director, National Institutes of Health.

[FR Doc. 99–3476 Filed 2–11–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Substance Abuse Prevention and Treatment Block Grant Application Format—FY 2000–02 (OMB No. 0930–0080, Revision)—The Public Health Service Act (42 U.S.C. 300x 21–35 & 51–64) authorizes block grants to States for the purpose of providing substance abuse prevention and treatment services. Under the provisions of the law, States may receive allotments only after an application is submitted and approved by the Secretary, DHHS. For the FY 2000 Substance Abuse Prevention and Treatment (SAPT) Block Grant cycle, SAMHSA will provide States with modified application forms and instructions. These changes affect several areas of the application and add new sections to accommodate voluntary State reporting of treatment and prevention outcome information. The portion of the application that asks for information related to section 1926 (sales of tobacco to minors) will combine questions related to enforcement of laws related to youth access to tobacco and provide clarifying information and additional instructions

related to other existing required information.

Additionally, with respect to the treatment portion of the SAPT block grant, the revised application will: replace information requested for Intravenous Drug Users that has not been required since 1995 with reporting of expenditures for HIV Early Intervention Services required of designated States; provide an appropriate format for reporting of funds authorized under P.L. 104–121, the Supplementary Security Income special authorization for fiscal years 1997 and 1998; and, add additional instructions and questions related to the States' use of data generated by the State Needs Assessment Program in the application. A new Section V will be added to accommodate voluntary reporting of treatment performance and outcome Measures. Treatment information to be collected includes: an unduplicated count of persons served with Block Grant funds; and changes in client Alcohol and Drug use, Illegal Activity, Employment Status and Homelessness.

A section is also being developed to accommodate voluntary state reporting on certain prevention performance and outcome measures. It is anticipated that this section will focus on the six prevention strategies currently specified in the block grant application and related prevention domains.

Added respondent burden is considered to be offset by reduced burden resulting from improved electronic application protocols. The annual burden estimate for the SAPT Block Grant Application Format is shown below:

Number of respondents	Responses per respondent	Hours per response	Total hours
1[1]	1	530	530
59	1	563	33,217
			33,747

[1] Red Lake Indian Tribe (exempt from Tobacco Regulation requirements).

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: February 7, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–3470 Filed 2–11–99; 8:45 am]

BILLING CODE 4162–20—P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4343–FA–02]

Announcement of Funding Awards for the Self-Help Homeownership Opportunity Program (SHOP) Fiscal Year 1998

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of the funding awards for the competitive component of the Self-Help Homeownership Opportunity Program (SHOP). These awards will be used to facilitate and encourage innovative homeownership opportunities through the provision of self-help housing where the homebuyer contributes a significant amount of sweat-equity toward the construction of the new dwelling. The purpose of this document is to announce the names and addresses of the award winners and the amounts of the awards.

FOR FURTHER INFORMATION CONTACT: Joan Morgan, Office of Affordable Housing Programs, Department of Housing and Urban Development, room 7164, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–2685 (this is not a toll free number). This number can be accessed via TTY by calling the Federal Information Relay Service Operator at 1–800–877–TDDY (1–800–877–8339).

SUPPLEMENTARY INFORMATION:

On June 1, 1998 (63 FR 29828), the Department published a Request for Expressions of Interest for $6,262,500 in SHOP grants, as authorized by section 11 of the Housing Opportunity Program Extension Act of 1996.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as follows:

Awards for the Self-Help Homeownership Opportunity Program

1. Housing Assistance Council, 1025 Vermont Avenue, N.W., Suite 606, Washington, D.C. 20005, telephone (202) 842–8600, $4.8 million.

2. ACORN Housing Corporation, 117 West Harrison St., #200, Chicago, Il. 60605, telephone (312) 939–1611, $751,500.

3. Northwest Regional Facilitators, 525 E. Mission Avenue, Spokane, WA 99202, telephone (509) 484–6733, $688,875.

Dated: February 4, 1999.

Cardell Cooper,

Assistant Secretary for Community Planning and Development.

[FR Doc. 99–3461 Filed 2–11–99; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–960–99–1990–00]

Resource Advisory Council Meeting, Butte, Montana

AGENCY: Butte Field Office, Bureau of Land Management, DOI.

ACTION: Notice of Butte Resource Advisory Council meeting, Butte, Montana.

SUMMARY: The Butte Resource Advisory Council will convene at 9 a.m., Thursday, March 4, 1999, at the Butte Field Office, 106 North Parkmont, Butte, Montana. The main issue to be discussed will be the progress made by the Interagency OHV Team.

The meeting is open to the public and written comments may be given to the Council. Oral comments may be presented to the Council at 3 p.m. The time allotted for oral comment may be limited, depending on the number of persons wishing to be heard. Individuals who plan to attend and need further information about the meeting, or who need special assistance, such as sign language or other

reasonable accommodations, should contact the Butte Field Office, 106 North Parkmont (P.O. Box 3388), Butte, Montana 50702–3388, telephone 406–494–5059.

FOR FURTHER INFORMATION CONTACT: BLM Butte Field Manager Merle Good at the above address or telephone number.

Dated: February 5, 1999.

Merle Good,

Butte Field Manager.

[FR Doc. 99–3629 Filed 2–11–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–41–5700; WYW142929]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

February 1, 1999.

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW142929 for lands in Carbon County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW142929 effective October 1, 1998, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 99–3502 Filed 2–11–99; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–038–1110–00; NMNM 95103]

Public Land Order No. 7376; Withdrawal of Public Lands for the Ladron Mountain Area of Critical Environmental Concern; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 4,556.60 acres of public lands from surface entry and mining for a period of 50 years for the Bureau of Land Management to protect and preserve endangered desert bighorn sheep habitat within the Ladron Mountain Area of Critical Environmental Concern. The lands have been and will remain open to mineral leasing. An additional 40 acres of non-Federal land, if acquired by the United States, would also be withdrawn by this order.

EFFECTIVE DATE: February 12, 1999.

FOR FURTHER INFORMATION CONTACT: Lois Bell, BLM Socorro Field Office, 198 Neel Avenue NW, Socorro, New Mexico 87801, 505–835–0412.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws, (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws, to protect and preserve endangered desert bighorn sheep habitat within the Ladron Mountain Area of Critical Environmental Concern:

New Mexico Principal Meridian

Federal Lands

T. 2 N., R. 2 W.,
Sec. 2, lots 1 to 8, inclusive, S½N½, and N½S½;
Sec. 32, lots 1 to 4, inclusive, and W½SW¼.
T. 3 N., R. 2 W.,
Secs. 16, 32 and 36.
T. 2 N., R. 3 W.,
Sec. 2, lot 4, S½N½, and S½;
Sec. 16;
Sec. 36, SE¼SW¼ and NW¼SE¼.
T. 3 N., R. 3 W.,
Sec. 36, N½, SW¼, NE¼SE¼, and W½SE¼.

The areas described aggregate 4,556.60 acres in Socorro County.

2. The following described non-Federal lands are located within the boundary of the Ladron Mountain Cultural Area of Critical Environmental Concern. In the event these lands return to public ownership, they would be subject to the terms and conditions of this withdrawal as described in Paragraph 1:

Non-Federal Land

T. 3 N., R. 3 W.,
Sec. 36, SE¼SE¼.

This area described contains 40 acres in Socorro County.

3. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

4. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: January 29, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99–3448 Filed 2–11–99; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–020–4310–01; NMNM–98047/G–010–G9–0252]

A Direct Sale of Public Land to Lorraine Dawkins of Rinconada, NM

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action.

SUMMARY: The following public land has been found suitable for direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713) and at no less than the estimated fair market value. The land will not be offered for sale until at least 60 days after the date of this notice.

New Mexico Principal Meridian

T. 23 N., R. 10 E.,
Section 20, lot 18.

The subject public land containing 0.07 acres, more or less, will be sold to Lorraine Dawkins of Rinconada, NM. The sale is to resolve an unauthorized structure (bridge) which could not be accomplished under a right-of-way since the bridge did not meet BLM

standards for bridges. The disposal is consistent with State and local government programs, plans, and applicable regulations.

EFFECTIVE DATE: Interested parties may submit comments on the direct sale on or before March 29, 1999.

ADDRESSES: Comments should be sent to the Taos Field Office Manager, BLM, 226 Cruz Alta Rd., Taos, NM 87571.

FOR FURTHER INFORMATION CONTACT: Francina Martinez, BLM, Taos Field Office, 226 Cruz Alta Rd., Taos, NM 87571, or at (505) 758–8851.

SUPPLEMENTARY INFORMATION: The direct sale will be subject to:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States in accordance with the Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document or other document of conveyance is available for review at this BLM office.

Publication of this notice in the **Federal Register** will segregate the public land from appropriations under the public land laws including the mining laws but not the mineral leasing laws. This segregation will terminate upon the issuance of a patent or other document of conveyance, 270 days from date of publication of this notice in the **Federal Register** or upon publication of Notice of Termination, whichever occurs first.

Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: February 2, 1999.

Alden Sievers,

Field Office Manager.

[FR Doc. 99–3443 Filed 2–11–99; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–09–1420–00]

Montana: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice.

SUMMARY: The plat of survey of the following described land is scheduled to be officially filed in the Montana State Office, Billings, Montana, thirty (30) days from the date of this publication.

Principal Meridian, Montana

UNSURVEYED T. 15 N., R. 27 W.

The plat, in two sheets, representing the entire survey record of the dependent resurvey of a portion of Mineral Survey No. 3256, Consolidated Cedar Creek Placer and Mineral Survey No. 10997, Bonanza lode, and the survey of Tract 37 and the centerline of that portion of Forest Service Road No. 388 within Tract 37, in unsurveyed Township 15 North, Range 27 West, Principal Meridian, Montana, was accepted February 4, 1999.

This survey was executed at the request of the U.S. Forest Service, Lolo National Forest, and was necessary to identify lands for a proposed land exchange.

A copy of the preceding described plat will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against this survey, as shown on this plat, is received prior to the date of the official filing, the filing will be stayed pending consideration of the protest. This particular plat will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107–6800.

Dated: February 4, 1999.

Steven G. Schey,

Acting Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 99–3449 Filed 2–11–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil No. 98–CV–2340 (TPJ)]

United States v. Halliburton Company; Public Comment and Plaintiff's Response

Pursuant to the Antitrust Procedures and Penalities Act, 15 U.S.C. 16(b)–(h), the United States of America hereby publishes below the comment received on the proposed Final Judgment in *United States* v. *Halliburton Company, et al.*, Civil No. 98–CV–2340 (TPJ), filed in the United States District Court for the District of Columbia, together with the United States' response to the comment.

Copies of the comment and response are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 Seventeh Street, N.W., Washington, DC 20530 (telephone: 202/514–2481) and at the office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, N.W., Washington, DC 20001. Copies of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations, Antitrust Division.

Plaintiff's Response to Public Comment

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C.A. 16(b)–(h) (1997) (''Tunney Act''), the United States hereby responds to the single public comment received regarding the proposed Final Judgment in this case.

I. Background

On September 29, 1998, the United States Department of Justice (''the Department'') filed the Complaint in this matter. The Complaint alleges that the proposed merger of Halliburton Company (''Halliburton'') and Dresser Industries, Inc. (''Dresser'') would combine two of only four companies that provide logging-while-drilling (''LWD'') tools and services for oil and natural gas drilling and are the only sources of current and likely future innovations in new or improved LWD tools. LWD tools provide data during drilling for oil on the type of formation being drilled, whether there is oil in the formation, and the ease with which the oil can be extracted from the formation. LWD tools are mounted on the drill string and measure and transmit data while the drilling is ongoing that allow the drillers to determine if changes should be made in the drilling. Also mounted on the drill string with LWD tools are measurement-while-drilling (''MWD'') tools. MWD tools measure and transmit data while the drilling is ongoing about the direction and angle of the drill bit. Because it is necessary that LWD tools and MWD tools be compatible, customers who want to use both types of tools on a particular drilling project usually obtain them from the same company. The proposed merger would reduce competition and likely lead to higher prices for LWD services, reduce LWD service quality, and slow the pace of LWD-related innovation, in violation of Section 7 of the Clayton Act, 15 U.S.C.A. 18 (1997).

Simultaneously with the filing of the Complaint, the Plaintiff filed the

proposed Final Judgment and a Stipulation and Order signed by all the parties that allows for entry of the Final Judgment following compliance with the Tunney Act. A Competitive Impact Statement (''CIS'') was also filed, and subsequently published in the **Federal Register** on November 2, 1998. The CIS explains in detail the provisions of the proposed Final Judgment, the nature and purposes of these proceeding, and the transaction giving rise to the alleged violation.

To prevent the competitive harm, the proposed Final Judgment requires the defendants to divest Halliburton's worldwide LWD business, including virtually all of Halliburton's LWD tools, enough of its MWD tools for use with the LWD tools, manufacturing, workshop, and testing and repair equipment, a U.S. facility, the right to hire employees of the LWD business, and worldwide, royalty-free, irrevocable licenses to the intellectual property used in connection with the use, manufacture or sale of the transferred tools.

The sixty-day comment period for public comments expired on January 1, 1999. The Department received only one comment.[1] The comment was prepared by Mr. Geoffrey A. Mantooth, an attorney, on behalf of his client, Mr. Serge A. Scherbatskoy.

II. Response to the Public Comment

Mr. Mantooth observes that the proposed Final Judgment ''attempts to distinguish between 'LWD Service' and 'MWD Services,' and allows Halliburton to keep some of its MWD Services.'' Mr. Mantooth then states that the proposed Final Judgment ''does not give any basis or reason for the definitions of LWD and MWD. The distinction between LWD and MWD appears to arbitrary and without merit.'' Mr. Mantooth continues by citing classifications of LWD and MWD tools that appear in Schedule A of the proposed Final Judgment, contrasting these classifications with descriptions appearing in an industry trade journal (copy attached to his comment), and concluding that in that particular journal ''the distinction between LWD and MWD is clearly blurred.'' Mr. Mantooth ends his letter with a request for ''a more realistic definition'' of LWD Services. He provides no suggestions for doing so.

Mr. Mantooth's comment appears to be arguing either that the Department should have alleged a broader market and required divestiture of more MWD assets, or that the proposed Final Judgment's description of the divestiture assets is not sufficiently specific or clear. Neither argument is adequate to support a conclusion that the public interest would not be served by entry of the proposed Final Judgment.

The Department defined the product market as LWD services for offshore drilling projects. This definition, which excluded MWD services, was based on investigation and analysis, using judicial precedent and the Horizontal Merger Guidelines issued jointly by the Department and the Federal Trade Commission. As is set forth in paragraphs 10 and 11 of the Complaint, MWD tools and LWD tools provide different measurements—the former measure the direction and angle of the drill bit, while the latter evaluate the formation through which the drill bit is cutting. Many drillers purchase only MWD services, and there are a number of firms that provide MWD services that do not supply LWD services. While the component used to transmit data from MWD tools does share characteristics with the component used to transmit data from LWD tools, the tools themselves are distinct. Mr. Mantooth's attachment to his letter focuses on the data transmission components, not on the tools.[2]

Mr. Mantooth may not intend to disagree with the Department's product market, but simply expressing a concern that there is insufficient specificity in the description of the divestiture assets. The Department believes that such a concern is unwarranted. Although there are similarities in the two pieces of equipment cited in the attachment to Mr. Mantooth's comment, the Department believes the list of tools in Schedule A to the proposed Final Judgment is sufficiently specific. HDS1, which is used to transmit data from MWD tools, and HDSM, which is used to transmit data from LWD tools, are distinct products. The Department is confident that prospective purchasers will be able to get the equipment contemplated by the proposed Final Judgment, and that the Department will be able to ensure that its contemplated remedy is effected.

III. Conclusion

After careful consideration of the comment, the Plaintiff concludes that Mr. Mantooth's comment does not change its determination that entry of the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint and is in the public interest. The Plaintiff will move the Court to enter the proposed Final Judgment after the public comment and this Response has been published in the **Federal Register**, as 15 U.S.C. 16(d) requires.

Dated this 27th day of January, 1999.

Respectively submitted,

Angela L. Hughes,

Member of The Florida Bar, #211052.

Robert L. McGeorge,

Joan H. Hogan,

Andrew K. Rosa,

Salvatore Massa,

U.S. Department of Justice, Antitrust Division, 325 7ty Street, NW, Suite 500, Washington, D.C. 20530, (202) 307–6351.

Wofford, Zobal & Mantooth

Patent Attorneys

110 West Seventh, Suite 500, Fort Worth, Texas 76102

December 29, 1998.

Via Federal Express

Mr. Roger W. Fones,

Chief, Transportation, Energy and Agricultural Section, Antitrust Division, 325 Seventh Street, N.W., Suite 500, Washington, D.C. 20530

Re: United States v. Halliburton Company, Case No. 98–CV–2340

Dear Mr. Fones: Pursuant to the invitation in the **Federal Register** of November 2, 1998, (Volume 63, Number 211), the following is a comment on the subject case:

The proposed final judgment attempts to distinguish between ''LWD Services'' and ''MWD Services'', and allows Halliburton to keep some of its MWD Services.

Yet, the proposed final judgment does not give any basis or reason for the definitions of LWD and MWD. The distinction between LWD and MWD appears to be arbitrary and without merit. For example, in Schedule A of the proposed final judgment, LWD includes CWRGM Resistivity, DNSC Density, and SCWR Slim Resistivity Tool, while MWD includes HDSM Directional Tool, HDS1 MWD Kits, and RX4 MLWD Surface System. In the May 1998 issue of Hart's Petroleum Engineer International, page 17 (copy enclosed), the distinction between LWD and MWD is clearly blurred.

The undersigned would appreciate a more realistic definition of LWD services. If there

[1] The comment is attached. The Department plans to publish promptly the comment and this response in the Federal Register. The Department will provide the Court with a certificate of compliance with the requirements of the Tunney Act and file a motion for entry of the Final Judgment once publication takes place.

[2] While Mr. Mantooth may believe the Department should have alleged a broader product market, the public interest standard set forth in the Tunney Act does not extend ''to evaluate claims that the government did not make and to inquire as to why they were not made.'' *United States* v *Microsoft Corp.*, 56 F.3d 1448, 1459 (D.C. Cir. 1995); see also *United States* v *Associated Milk Producers, Inc.*, 534 F.2d 113, 117–18 (8th Cir. 1976). Mr. Mantooth's comment, to the extend it challenges the Department's product market, does not therefore provide a reason to find that the proposed Final Judgement fails to satisfy the public interest.

are any questions, please do not hesitate to call.

Very Truly Yours,

Geoffrey A. Mantooth,

Attorney for Serge A. Scherbatskoy.

cc: United States District of Columbia (w/enclose)

The MWD Comparison Tables which is the enclosure to the letter sent by Geoffrey A. Mantooth of Wofford, Zobal & Mantooth can be obtained from the U.S. Department of Justice, Antitrust Division, 325 7th Street, Room 215, Washington, D.C. 20530 (202/514–2481) or the United States District Court, District of Columbia.

Certificate of Service

I hereby certify that I have caused a copy of the foregoing Plaintiff's Response to Public Comments, as well as the attached copy of the public comment received from Geoffrey A. Mantooth on behalf of Serge A. Scherbatskoy, to be served on counsel for Defendants in this matter by facsimile and first class mail, postage prepaid, at the addresses set forth below.

Counsel for Defendant Halliburton Company:

Ky P. Ewing, Jr., Esquire,

Vinson & Elkins, 1455 Pennsylvania Avenue, N.W., Washington, D.C. 20004–1008, Telephone: (202) 639–6580, Facsimile: (202) 639–6604.

Counsel for Defendant Dresser Industries, Inc.:

Helen D. Jaffe, Esquire,

Weil, Gotshal & Manges, 767 Fifth Avenue, New York, NY 10153, Telephone: (212) 310–8572, Facsimile: (212) 310–8007.

Dated: January 27, 1999.

Angela L. Hughes,

[FR Doc. 99–2715 Filed 2–10–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

New General Wage Determination Decisions

The number of decisions added to the Government Printing Office document entitled ''General Wage determinations Issued Under the Davis-Bacon and related Acts'' are listed by Volume and States:

Volume V

Iowa
IA990080 (Feb. 12, 1999)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

Maryland
MD990002 (Feb. 12, 1999)
Pennsylvania
PA990005 (Feb. 12, 1999)
PA990006 (Feb. 12, 1999)
PA990026 (Feb. 12, 1999)
PA990030 (Feb. 12, 1999)
PA990031 (Feb. 12, 1999)

Volume III

None

Volume IV

Michigan
MI990001 (Feb. 12, 1999)
MI990002 (Feb. 12, 1999)
MI990003 (Feb. 12, 1999)
MI990004 (Feb. 12, 1999)
MI990005 (Feb. 12, 1999)
MI990007 (Feb. 12, 1999)
MI990046 (Feb. 12, 1999)
MI990047 (Feb. 12, 1999)
MI990060 (Feb. 12, 1999)
MI990063 (Feb. 12, 1999)
MI990064 (Feb. 12, 1999)
MI990066 (Feb. 12, 1999)
MI990074 (Feb. 12, 1999)
MI990075 (Feb. 12, 1999)
MI990077 (Feb. 12, 1999)
MI990078 (Feb. 12, 1999)
MI990081 (Feb. 12, 1999)

MI990082 (Feb. 12, 1999)
MI990083 (Feb. 12, 1999)
MI990084 (Feb. 12, 1999)

Volume V

Iowa
IA990002 (Feb. 12, 1999)
IA990005 (Feb. 12, 1999)
IA990013 (Feb. 12, 1999)
Missouri
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None

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California
CA990009 Feb. 05, 1999)
CA990026 (Feb. 05, 1999)
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CA990029 (Feb. 05, 1999)
CA990030 (Feb. 05, 1999)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 4th day of February 1999.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 99–3200 Filed 2–11–99; 8:45 am]

BILLING CODE 4510–27–M

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Finance Committee

TIME AND DATE: The Finance Committee of the Legal Services Corporation Board of Directors will meet on February 20, 1999. The meeting will begin at 3:30 pm and continue until the Committee concludes its agenda.

LOCATION: Eden Roc Hotel, 4525 Collins Avenue, Miami Beach, FL 33140.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of minutes of the Committee's meeting of September 11, 1998.
3. Office of Inspector General's presentation of the Corporation's FY ''98 annual audit.
4. Review and adoption of FY ''99 operating budget for the Corporation.
5. Review of expenses through December 31, 1998.
6. Consider and act on other business.
7. Public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336–8810.

Dated: February 9, 1999.

Victor M. Fortuno,

General Counsel.

[FR Doc. 99–3698 Filed 2–10–99; 3:45 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Committee on Provision for the Delivery of Legal Services

TIME AND DATE: The Committee on Provision for the Delivery of Legal Services of the Legal Services Corporation Board of Directors will meet on February 21, 1999. The meeting will begin at 10:00 a.m.and continue until the Committee concludes its agenda.

LOCATION: Eden Roc Hotel, 4525 Collins Avenue, Miami Beach, FL 33140.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of minutes of the Committee's meeting of November 15, 1998.
3. Report by the Office of Program Performance on the FY 1999 competitive grants process.
4. Report by the Office of Program Performance on the state planning process.
5. Consider and act on other business.
6. Public Comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336–8810.

Dated: February 9, 1999.

Victor M. Fortuno,

General Counsel.

[FR Doc. 99–3699 Filed 2–10–99; 3:45 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors' Performance Reviews Committee

TIME AND DATE: The Board of Directors' Performance Reviews Committee will meet on February 21, 1999. The meeting will commence at 1:00 p.m.and continue until the Committee concludes its agenda.

LOCATION: Eden Roc Hotel, 4525 Collins Avenue, Miami Beach, FL 33140.

STATUS OF MEETING: Except for approval of the meeting agenda and any miscellaneous business that may come before the committee, the meeting will be closed to the public. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(2) & (6)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR § 1622.5(a) & (e)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of November 14, 1998.

Closed Session

3. Continue and complete the Committee's performance appraisal of the President of the Corporation.

4. Continue and complete the Committee's performance appraisal of the Inspector General of the Corporation.

Open Session

5. Consider and act on other business.
6. Public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336–8810.

Dated: February 9, 1999.

Victor M. Fortuno,

General Counsel.

[FR Doc. 99–3700 Filed 2–10–99; 3:45 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Meeting of the Board of Directors Operations and Regulations Committee

TIME AND DATE: The Operations and Regulations Committee of the Legal Services Corporation Board of Directors will meet on February 21, 1999. The meeting will begin at 2:30 p.m. and continue until the Committee concludes its agenda.

LOCATION: Eden Roc Hotel, 4525 Collins Avenue, Miami Beach, FL 33140.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of minutes of the Committee's meeting of November 15, 1998.
3. Report on proposed rule 45 CFR Part 1628, *Recipient Fund Balances.*
4. Consider public comments and act on final rule 45 CFR Part 1635, *Timekeeping Requirement.*
5. Develop for proposed adoption by the Board a mechanism for setting of the compensation level for the Corporation's Inspector General.
6. Consider and act on other business.
7. Public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336–8810.

Dated: February 9, 1999.

Victor M. Fortuno,

General Counsel.

[FR Doc. 99–3701 Filed 2–10–99; 3:45 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on February 22, 1999. The meeting will begin at 10:00 a.m. and continue until conclusion of the Board's agenda.

LOCATION: Eden Roc Hotel, 4525 Collins Avenue, Miami Beach, FL 33140.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Corporation's General Counsel will report to the Board on litigation to which the Corporation is or may become a party, and the Board may act on the matters reported. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c) (10)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR § 1622.5(h)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Approval of minutes of the Board's meeting of November 16, 1998.
3. Approval of minutes of the Board's executive session meeting of November 16, 1998.
4. Chairman's Report.
5. Members' Reports.
6. Election of officers of the Board.
7. Scheduled Public Speakers:
   - Representative Lincoln Diaz-Balart
   - Representative Carrie Meek
8. President's Report.
9. Inspector General's Report.
10. Consider and act on the report of the Board's Finance Committee.
11. Consider and act on the report of the Board's Committee on Provision for the Delivery of Legal Services.
12. Consider and act on the report of the Board's Operations and Regulations Committee.
    - Consider and act on the Committee's recommendation regarding the Inspector General's compensation level.
    - Consider and act on the Committee's recommendation regarding final rule 45 CFR Part 1635, *Timekeeping Requirement.*
13. Consider and act on the report of the Board's Performance Reviews Committee.
14. Report on the status of the special panel the board authorized the Board Chair to establish to study and report back to the board on issues relating to the Corporation grantees' representation of legal alien workers and the requirement that they be ''present in the United States.''

Closed Session

15. Briefing [1] by the Inspector General on the activities of the OIG.
16. Consider and act on the General Counsel's report on potential and pending litigation involving the Corporation.

Open Session

17. Public comment.
18. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336–8810.

Dated: February 9, 1999.

Victor M. Fortuno,

General Counsel.

[FR Doc. 99–3702 Filed 2–10–99; 3:45 pm]

BILLING CODE 7050–01–P

THE NATIONAL BIPARTISAN COMMISSION ON THE FUTURE OF MEDICARE

Public Meeting

The National Bipartisan Commission on the Future of Medicare has tentatively scheduled a public meeting for Monday, March 1, 1999, in Washington, DC. Details about the meeting time and location to be announced. Please check the Commission's web site for additional

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to any such portion of the closed session. 5 U.S.C. 552(b)(a)(2) and (b). See also 45 CFR §§ 1622.2 & 1622.3.

information: http://Medicare.Commission.Gov

Agenda: Members of the Commission to discuss a premium support system.

If you have any questions, please contact the Bipartisan Medicare Commission, ph: 202–252–3380.

I hereby authorize publication of the Medicare Commission meetings in the **Federal Register**.

Julie Hasler,

Office Manager, National Bipartisan Medicare Commission.

[FR Doc. 99–3696 Filed 2–10–99; 3:38 am]

BILLING CODE 1132–00–M

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA has submitted the following extension of a currently approved collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection was originally published on November 16, 1998. No comments were received.

DATES: Comments will be accepted until March 15, 1999.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. James L. Baylen (703) 518–6411, National Credit Union Administration 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: jbaylen@ncua.gov.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection request, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen, (703) 518–6411.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0133.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Title: 12 CFR 703 Investment and Deposit Activities.

Description: To ensure that federal credit unions make safe and sound investments, the rule requires that they establish written investment policies and review them annually, document details of the individual investments monthly, ensure adequate broker/dealer selection criteria and record credit decisions regarding deposits in certain financial institutions.

Respondents: 6,900.

Estimated No. of Respondents/Recordkeepers: 6,900.

Estimated Burden Hours Per Response: 42.8 hours.

Frequency of Response: Other.

Estimated Total Annual Burden Hours: 295,481.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on February 4, 1999.

Becky Baker,

Secretary of the Board.

[FR Doc. 99–3411 Filed 2–11–99; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA is resubmitting the following revision to an approved collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection was originally published on November 12, 1998. No comments were received.

DATES: Comments will be accepted until March 15, 1999.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. James L. Baylen (703) 518–6411, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: jbaylen@ncua.gov.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection request, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen, (703) 518-6411.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0138.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Title: Community Development Revolving Loan Program for Credit Unions, Application for Funds.

Description: NCUA requests this information from credit unions to assess financial ability to repay the loans and to ensure the funds are used to benefit the institution and community it serves.

Respondents: Community Credit Unions which request loans from the revolving loan program.

Estimated No. of Respondents/Recordkeepers: 25.

Estimated Burden Hours Per Response: 8 hours.

Frequency of Response: Other. As the need for borrowing arises.

Estimated Total Annual Burden Hours: 200.

Estimated Total Annual Cost: $3,126.

By the National Credit Union Administration Board on February 4, 1999.

Becky Baker,

Secretary of the Board.

[FR Doc. 99–3412 Filed 2–11–99; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing

The National Transportation Safety Board will convene a public hearing beginning at 9:00 a.m., local time on Wednesday, February 24, 1999, at the Adam's Mark Dallas Hotel, 400 N. Olive Street, Dallas, Texas 75201 concerning the Safety Oversight on the Union Pacific Railroad. For more information, contact James P. Dunn, NTSB Office of Railroad Safety at (202) 314–6435 or Keith Holloway, NTSB Office of Public Affairs at (202) 314–6100.

Dated: February 8, 1999.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 99–3439 Filed 2–11–99; 8:45 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–116]

Notice and Solicitation of Comments Pursuant to 10 CFR 20.1405 and 10 CFR 50.82(b)(5) Concerning Proposed Action To Decommission Iowa State University UTR–10 Research Reactor

On January 25, 1999, the U.S. Nuclear Regulatory Commission (the Commission) noticed receipt of an application from the Iowa State University dated January 6, 1999, for a license amendment to approve its proposed decommissioning plan for the Iowa State Research Reactor (Facility License No. R–59) located on the west edge of the main campus of the Iowa State University, in Ames, Iowa.

In accordance with 10 CFR 20.1405, the Commission is providing notice and soliciting comments from local and State governments in the vicinity of the site and any Indian Nation or other indigenous people that have treaty or statutory rights that could be affected by the decommissioning. This notice and solicitation of comments is published pursuant to 10 CFR 20.1405, which requires publication in the **Federal Register** and in a forum such as local newspapers, letters to State or local organizations, or other appropriate forum that is readily accessible to individuals in the vicinity of the site. Comments should be provided within 30 days of the date of this notice in accordance with 10 CFR 20.1007, ''Communications,'' to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Further, in accordance with 10 CFR 50.82(b)(5), notice is also provided of the Commission's intent to approve the plan by amendment, subject to such conditions and limitations as it deems appropriate and necessary, if the plan demonstrates that decommissioning will be performed in accordance with the regulations in this chapter and will not be inimical to the common defense and security or to the health and safety of the public.

A copy of the application is available for public inspection at the Commission's Public Document Room, the Gelman Building, at 2120 L Street NW., Washington, DC 20037.

Dated at Rockville, Maryland, this 5th day of February 1999.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–3494 Filed 2–11–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–199]

Notice and Solicitation of Comments Pursuant to 10 CFR 20.1405 and 10 CFR 50.82(b)(5) Concerning Proposed Action To Decommission Manhattan College Zero Power Research Reactor

On April 30,1998, the U.S. Nuclear Regulatory Commission (the Commission) noticed receipt of an application from Manhattan College dated January 12, 1998, for a license amendment to approve its proposed decommissioning plan for the Manhattan College Zero Power Research Reactor (Facility License No. R–94) located in the Leo Engineering Building, two blocks from the Manhattan College Campus in Riverdale, New York.

In accordance with 10 CFR 20.1405, the Commission is providing notice and soliciting comments from local and State governments in the vicinity of the site and any Indian Nation or other indigenous people that have treaty or statutory rights that could be affected by the decommissioning. This notice and solicitation of comments is published pursuant to 10 CFR 20.1405, which requires publication in the **Federal Register** and in a forum such as local newspapers, letters to State or local organizations, or other appropriate forum that is readily accessible to individuals in the vicinity of the site. Comments should be provided within 30 days of the date of this notice in accordance with 10 CFR 20.1007, ''Communications,'' to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Further, in accordance with 10 CFR 50.82(b)(5), notice is also provided of the Commission's intent to approve the plan by amendment, subject to such conditions and limitations as it deems appropriate and necessary, if the plan demonstrates that decommissioning will be performed in accordance with the regulations in this chapter and will not be inimical to the common defense and security or to the health and safety of the public.

A copy of the application is available for public inspection at the Commission's Public Document Room, the Gelman Building, at 2120 L Street NW., Washington, DC 20037.

Dated at Rockville, Maryland, this 5th day of February 1999.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–3495 Filed 2–11–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–445 and 50–446]

Tu Electric Comanche Peak Steam Electric Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating Licenses No. NPF–87 and No. NPF–89 that were issued to TU Electric (the licensee) for operation of the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, located in Somervell County, Texas.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment will revise the existing, or current, Technical Specifications (CTS) for CPSES in their entirety based on the guidance provided in NUREG–1431, ''Standard Technical Specifications, Westinghouse Plants,'' Revision 1, dated April 1995, and in the Commission's ''Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors,'' published on July 22, 1993 (58 FR 39132). The proposed amendment is in accordance with the licensee's amendment request dated May 15, 1997, as supplemented by eleven letters in 1998 dated June 26, August 5, August 28, September 24, October 21, October 23, November 24 (two letters), December 11, December 17, December 18, and three letters in 1999 dated February 3.

The Need for the Proposed Action

It has been recognized that nuclear safety in all nuclear power plants would benefit from an improvement and standardization of plant Technical Specifications (TS). The ''NRC Interim Policy Statement on Technical Specification Improvements for Nuclear Power Plants,'' (52 FR 3788) contained proposed criteria for defining the scope

of TS. Later, the Commission's ''Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors,'' published on July 22, 1993 (58 FR 39132), incorporated lessons learned since publication of the interim policy statement and formed the basis for revisions to 10 CFR 50.36, ''Technical Specifications.'' The ''Final Rule'' (60 FR 36953) codified criteria for determining the content of TS. To facilitate the development of standard TS for nuclear power reactors, each power reactor vendor owners' group (OG) and the NRC staff developed standard TS. For CPSES, the Improved Standard Technical Specifications (ISTS) are in NUREG–1431. This document formed the basis for the CPSES Improved Technical Specifications (ITS) conversion. The NRC Committee to review Generic Requirements (CRGR) reviewed the ISTS, made note of its safety merits, and indicated its support of the conversion by operating plants to the ISTS.

Description of the Proposed Change

The proposed changes to the CTS are based on NUREG–1431 and on guidance provided by the Commission in its Final Policy Statement. The objective of the changes is to completely rewrite, reformat, and streamline the CTS (i.e., to convert the CTS to the ITS). Emphasis is placed on human factors principles to improve clarity and understanding of the TS. The Bases section of the ITS has been significantly expanded to clarify and better explain the purpose and foundation of each specification. In addition to NUREG–1431, portions of the CTS were also used as the basis for the development of the CPSES ITS. Plant-specific issues (e.g., unique design features, requirements, and operating practices) were discussed with the licensee, and generic matters with Westinghouse and other OGs.

This conversion is a joint effort in concert with three other utilities: Pacific Gas & Electric Company for Diablo Canyon Power Plant, Units 1 and 2 (Docket Nos. 50–275 and 323); Union Electric Company for Callaway Plant (Docket No. 50–483); and Wolf Creek Nuclear Operating Corporation for Wolf Creek Generating Station (Docket No. 50–482). It was a goal of the four utilities to make the ITS for all the plants as similar as possible. This joint effort includes a common methodology for the licensees in marking-up the CTS and NUREG–1431 Specifications, and the NUREG–1431 Bases, that has been accepted by the staff.

This common methodology is discussed at the end of Enclosure 2, ''Mark-Up of Current TS''; Enclosure 5a, ''Mark-Up of NUREG–1431 Specifications''; and Enclosure 5b, ''Mark-Up of NUREG–1431 Bases,'' for each of the 14 separate ITS sections that were submitted with the licensee's application. For each of the ITS sections, there is also the following enclosures:

- Enclosure 1, ''Cross-Reference Tables,'' the cross-reference table connecting each CTS specification (i.e., LCO, required action, or SR) to the associated ITS specification, sorted by both CTS and ITS specifications.
- Enclosures 3A and 3B, ''Description of Changes to Current TS'' and ''Conversion Comparison Table,'' the description of the changes to the CTS section and the comparison table showing which plants (of the four licensees in the joint effort) that each change to the CTS applies to.
- Enclosure 4, ''No Significant Hazards Considerations,'' the no significant hazards consideration (NHSC) of 10 CFR 50.91 for the changes to the CTS with generic NHSCs for administrative, more restrictive, relocation, and moving-out-of-CTS changes, and individual NHSCs for less restrictive changes and with the organization of the NHSC evaluation discussed in the beginning of the enclosure.
- Enclosures 6A and 6B, ''Differences From NUREG–1431'' and ''Conversion Comparison Table,'' the descriptions of the differences from NUREG–1431 Specifications and the comparison table showing which plants (of the four licensees in the joint effort) that each difference to the ISTS applies to.

The common methodology includes the convention that, if the words in an CTS specification are not the same as the words in the ITS specification, but the CTS words have the same meaning or have the same requirements as the words in the ITS specification, then the licensees do not have to indicate or describe a change to the CTS. In general, only technical changes have been identified; however, some non-technical changes have also been identified when the changes cannot easily be determined. The portion of any specification which is being deleted is struck through (i.e., the deletion is annotated using the strike-out feature of the word processing computer program or crossed out by hand). Any text being added to a specification is shown by shading the text, placing a circle around the new text, or by writing the text in by hand. The text being struck through or added is shown in the marked-up CTS and ISTS pages in Enclosures 2 (CTS pages) and 5 (ISTS and ISTS Bases pages) for each ITS section attachment to the application. Another convention of the common methodology is that the technical justifications for the less restrictive changes are included in the NHSCs.

The proposed changes can be grouped into the following four categories: relocated requirements, administrative changes, less restrictive changes involving deletion of requirements, and more restrictive changes. These categories are as follows:

1. Relocated requirements (i.e., the licensee's LG or R changes) are items which are in the CTS but do not meet the criteria set forth in the Final Policy Statement. The Final Policy Statement establishes a specific set of objective criteria for determining which regulatory requirements and operating restrictions should be included in the TS. Relocation of requirements to documents with an established control program, controlled by the regulations or the TS, allows the TS to be reserved only for those conditions or limitations upon reactor operation which are necessary to obviate the possibility of an abnormal situation or event giving rise to an immediate threat to the public health and safety, thereby focusing the scope of the TS. In general, the proposed relocation of items from the CTS to the Updated Safety Analysis Report (USAR), appropriate plant-specific programs, station procedures, or ITS Bases follows the guidance of NUREG–1431. Once these items have been relocated to other licensee-controlled documents, the licensee may revise them under the provisions of 10 CFR 50.59 or other NRC-approved control mechanisms, which provide appropriate procedural means to control changes by the licensee.

2. Administrative changes (i.e., the licensee's A changes) involve the reformatting and rewording of requirements, consistent with the style of the ISTS in NUREG–1431, to make the TS more readily understandable to station operators and other users. These changes are purely editorial in nature, or involve the movement or reformatting of requirements without affecting the technical content. Application of a standardized format and style will also help ensure consistency is achieved among specifications in the TS. During this reformatting and rewording process, no technical changes (either actual or interpretational) to the TS will be made unless they are identified and justified.

3. Less restrictive changes and the deletion of requirements involves portions of the CTS (i.e., the licensee's LS and TR changes) which (1) provide

information that is descriptive in nature regarding the equipment, systems, actions, or surveillances, (2) provide little or no safety benefit, and (3) place an unnecessary burden on the licensee. This information is proposed to be deleted from the CTS and, in some instances, moved to the proposed Bases, USAR, or procedures. The removal of descriptive information to the Bases of the TS, USAR, or procedures is permissible because these documents will be controlled through a process that utilizes 10 CFR 50.59 and other NRC-approved control mechanisms. The relaxations of requirements were the result of generic NRC actions or other analyses. They will be justified on a case-by-case basis for the CPSES and described in the safety evaluation to be issued with the license amendment.

4. More restrictive requirements (i.e., the licensee's M changes) are proposed to be implemented in same areas to impose more stringent requirements that are in the CTS. These more restrictive requirements are being imposed to be consistent with the ISTS. Such changes have been made after ensuring the previously evaluated safety analysis for the CPSES was not affected. Also, other more restrictive technical changes have been made to achieve consistency, correct discrepancies, and remove ambiguities from the TS. Examples of more restrictive requirements include: placing a Limiting Condition for Operation (LCO) on station equipment which is not required by the CTS to be operable; more restrictive requirements to restore inoperable equipment; and more restrictive surveillance requirements.

There are nineteen other proposed changes to the CTS that may be included in the proposed amendment to convert the CTS to the ITS. These are beyond-scope issues (BSIs) changes in that they are changes to both the CTS and the ISTS. For the CPSES, these are the following:

1. ITS 3.1.7, a new action added for more than one digital rod position indicator per group inoperable.

2. ITS surveillance requirement (SR) 3.2.1.2, frequency, within 24 hours for verifying the axial heat flux hot channel factor is within limit after achieving equilibrium conditions.

3. ITS SR 3.6.3.7, note added to not require leak rate test of containment purge valves with resilient seals when penetration flow path is isolated by leak-tested blank flange.

4. ITS LCO 3.7.15, changes reference for the spent fuel pool level from that above top of fuel stored in racks to that above the top of racks.

5. ITS 5.6.5a.8, adds refueling boron concentration limits to the core operating limits report.

The above five BSIs are given in the licensee's application. The remaining fourteen BSIs may have been revised by the licensee's responses to the NRC requests for additional information (RAIs). The format for the fourteen BSIs listed below is the associated change number, RAI number, RAI response submittal date, and description of the change.

6. Change 10–3–LS–37 (ITS 3/4.4), question Q5.5–2, response letter dated September 24, 1998, the change added an allowance to CTS SR 4.4.9 for the reactor coolant pump flywheel inspection program (ITS 5.5.7) to provide an exception to the examination requirements specified in the CTS SR (i.e., regulatory position C.4.b of NRC Regulatory Guide (RG) 1.14, Revision 1).

7. Change 1–22–M (ITS 3/4.3), question Q3.3–49, response letter dated November 24, 1998, the change is given in the application. Quarterly channel operational tests (COTs) would be added to CTS Table 4.3–1 for the power range neutron flux-low, intermediate range neutron flux, and source range flux trip functions. The CTS only require a COT prior to startup for these functions. New Note 17 would be added to require that the new quarterly COT be performed within 12 hours after reducing power below P–10 for the power range and intermediate range instrumentation (P–10 is the dividing point marking the Applicability for these trip functions), if not performed within the previous 92 days. In addition, Note 9 is revised such that the P–6 and P–10 interlocks are verified to be in their required state during all COTs on the power range neutron flux-low and intermediate range neutron flux trip functions.

8. Change 1–7–LS–3 (ITS 3.4/3), question Q3.3–107, response letter dated November 24, 1998, the changes are given in the application and would (1) extend the completion time for CTS Action 3.b from no time specified to 24 hours for channel restoration or changing the power level to either below P–6 or above P–10, (2) reduce the applicability of the intermediate range neutron flux channels and deleted CTS Action 3.a as being outside the revised applicability, and (3) add a less restrictive new action that requires immediate suspension of operations involving positive reactivity additions and a power reduction below P–6 within 2 hours, but no longer requires a reduction to Mode 3. The changes would be to CTS Table 3.3–1 (Action 3 and New Action 3.1, and Function #5 and Footnote h to its applicable modes).

9. Change 1–9–A (ITS 5.0), question Q5.2–1, response letter dated September 24, 1998, a new administrative change added to the application. The CTS 6.2.2.e requirements concerning overtime would be replaced by a reference to administrative procedures for the control of working hours.

10. Change 1–15–A (ITS 5.0), question Q5.2–1, response letter dated September 24, 1998, a new administrative change added to the application. The purposed change would revise CTS 6.2.2.G to eliminate the title of Shift Technical Advisor. The engineering expertise is maintained on shift, but a separate individual would not be required as allowed by a Commission Policy Statement.

11. Change 2–18–A (ITS 5.0), question Q5.2–1, response letter dated September 24, 1998, a new administrative change added to the application. The dose rate limits in the Radioactive Effluent Controls Program for releases to areas beyond the site boundary would be revised to reflect 10 CFR Part 20 requirements.

12. Change 2–22–A (ITS 5.0), question Q5.2–1, response letter dated September 24, 1998, a new administrative change added to the application. The Radioactive Effluents Controls Program would be revised to include clarification statements denoting that the provisions of CTS 4.0.2 and 4.0.3, which allow extensions to surveillance frequencies, are applicable to these activities.

13. Change 3–11–A (ITS 5.0), question Q5.2–1, response letter dated September 24, 1998, the proposed change would revise the 3–11–A change submitted in the application. CTS 6.12, which provides high radiation area access control alternatives pursuant to 10 CFR 20.203(c)(2), would be revised to meet the current requirements in 10 CFR Part 20 and the guidance in NRC RG 8.3.8, on such access controls.

14. Change 3–18–LS–5(ITS 5.0), question Q5.2–1, response letter dated September 24, 1998, a new less restrictive change added to the application. The CTS 6.9.1.5 requirement to provide documentation of all challenges to the power operated relief valves (PORVs) and safety valves on the reactor coolant system would be deleted. This is based on NRC Generic Letter 97–02 which reduced requirements for submitting such information to the NRC and did not include these valves for information to be submitted.

15. Change 3.19–A (ITS 5.0), question Q5.2–1, response letter dated September 24, 1998, the administrative change is

being withdrawn with the licensee submitting change 3–11-A above.

16. Change 10–20–LS–39 (ITS 3/4.7), question Q3.7.10–14, response letter dated October 21, 1998, the change is given in the application and would revise and add an action to CTS LCO 3.7.7.1, for ventilation system pressure envelope degradation, that allows 24 hours to restore the CR pressure envelope through repairs before requiring the unit to perform an orderly shutdown. The new action has a longer allowed outage time than LCO 3.0.4 which the CTS would require to be entered immediately. This change recognizes that the ventilation trains associated the pressure envelope would still be operable.

17. Change 4–8–LS–34 (ITS 3/4.4), question Q3.4.11–2, response letter dated September 24, 1998, the change is given in the application and would limit the CTS SR 4.4.4.2 requirement to perform the 92 day surveillance of the pressurizer PORV block valves and the 18 month surveillance of the pressurizer PORVs (i.e., perform one complete cycle of each valve) to only Modes 1 and 2.

18. Change 4–9–LS–36 (ITS 3/4.4), question Q3.4.11–4, response letter dated September 24, 1998, the Change 4–9–LS–4 is revised to add a note to Action d for CTS LCO 3.4.4 that would state that the action does not apply when the PORV block valves are inoperable as a result of power being removed from the valves in accordance Action b or c for an inoperable PORV.

19. Change 1–60–A (ITS 3/4.3), question TR 3.3–007, followup items letter dated December 18, 1998, a new administrative change is being added to the application. The change would revise the frequency for performing the trip actuating device operational test (TADOT) in CTS Table 4.3–1 for the turbine trip (functional units 16.a and 16.b) to be consistent with the modes for which the surveillance is required. This would be adding a footnote to the TADOT that states ''Prior to exceeding the P–9 interlock whenever the unit has been in Mode 3.''

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed conversion of the CTS to the ITS for CPSES, including the beyond-scope issues discussed above. Changes which are administrative in nature have been found to have no effect on the technical content of the TS. The increased clarity and understanding these changes bring to the TS are expected to improve the operators control of CPSES in normal and accident conditions.

Relocation of requirements from the CTS to other licensee-controlled documents does not change the requirements themselves. Future changes to these requirements may then be made by the licensee under 10 CFR 50.59 and other NRC-approved control mechanisms which will ensure continued maintenance of adequate requirements. All such relocations have been found consistent with the guidelines of NUREG–1431 and the Commission's Final Policy Statement.

Changes involving more restrictive requirements have been found to enhance station safety.

Changes involving less restrictive requirements have been reviewed individually. When requirements have been shown to provide little or no safety benefit, or to place an unnecessary burden on the licensee, their removal from the TS was justified. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of a generic action, or of agreements reached during discussions with the OG, and found to be acceptable for the station. Generic relaxations contained in NUREG–1431 have been reviewed by the NRC staff and found to be acceptable.

In summary, the proposed revisions to the TS were found to provide control of station operations such that reasonable assurance will be provided that the health and safety of the public will be adequately protected.

The proposed actions 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 the occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for CPSES.

Agencies and Persons Consulted

In accordance with its stated policy, on January 26, 1999, the staff consulted with the Texas State official, Mr. Arthur Tate of the Texas Department of Health, Bureau of Radiation Control, 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 Commission 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 application dated May 15, 1997, as supplemented by the eleven letters in 1998 dated June 26, August 5, August 28, September 24, October 21, October 23, November 24 (two letters), December 11, December 17, December 18, and three letters in 1999 dated February 3, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019.

Dated at Rockville, Maryland, this 8th day of February 1999.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate IV–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 99–3496 Filed 2–10–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–3453; License No. SUA–917]

Atlas Corporation Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given of receipt of a Petition dated January 11, 1999, filed on behalf of the Grand Canyon Trust and

other parties (collectively identified as ''Trust'') pursuant to 10 CFR 2.206.

In its Petition, the Trust asserts that the Atlas site, at which there are no operations, is currently leaching toxic chemicals into the Colorado River at levels that are harming and killing endangered fish, seriously degrading the quality of at least a mile of river where these fish spawn and live, and threatening the extinction of these species. The Trust requests that the U.S. Nuclear Regulatory Commission take six immediate actions to halt these impacts and to ensure the conservation of the endangered species. The specific actions requested are as follows:

(1) Set water quality standards for the Atlas site that are protective of endangered fish and incorporate those standards into the Atlas license.

(2) Require immediate corrective action to eliminate the take of and jeopardy to endangered fish from the Atlas site.

(3) Prohibit any irreversible and irretrievable commitment of resources for the purpose of stabilizing and capping the tailings pile in its present location in the Colorado River floodplain until after consultation on the entire action has been completed.

(4) Require the removal of the tailings out of the floodplain of the Colorado River for long-term disposal.

(5) Consult with the U.S. Fish and Wildlife Service to develop a specific plan to conserve the endangered Colorado squawfish and razorback sucker, including, but not limited to, steps to protect the Colorado squawfish nursery areas in the vicinity of the Atlas pile.

(6) Take all other actions necessary to eliminate taking, prevent jeopardy to and insure the recovery of the Colorado squawfish and the razorback sucker, and to preserve the designated critical habitat on which these species depend.

Petitioner's requests for immediate action were denied by letter dated January 26, 1999. In the letter, it was noted that none of the six items addresses a health, safety, or environmental concern that requires emergency steps before a complete review as provided for in Section 2.206.

The Petition has been referred to the Director of the Office of Nuclear Material Safety and Safeguards. As provided by Section 2.206, appropriate action will be taken on this Petition within a reasonable time. A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, N.W., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Myron Fliegel, Petition Manager, Telephone (301) 415–6629.

Dated at Rockville, Maryland, this 8th day of February, 1999.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–3497 Filed 2–11–99; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Interest Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's web site (http://www.pbgc.gov).

DATES: The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in February 1999. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in March 1999.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is the ''applicable percentage'' (currently 85 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the ''premium payment year''). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

The assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in February 1999 is 4.39 percent (*i.e.*, 85 percent of the 5.16 percent yield figure for January 1999).

The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between March 1998 and February 1999.

For premium payment years beginning in:	The assumed interest rate is:
March 1998	5.01
April 1998	5.06
May 1998	5.03
June 1998	5.04
July 1998	4.85
August 1998	4.83
September 1998	4.71
October 1998	4.42
November 1998	4.26
December 1998	4.46
January 1999	4.30
February 1999	4.39

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in March 1999 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 8th day of February 1999.

John Seal,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 99–3469 Filed 2–11–99; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41025; File No. SR–MSRB–97–12]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change Relating to Political Contributions and Prohibitions on Municipal Securities Business

February 8, 1999.

I. Introduction

On December 18, 1997, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change. The proposed rule change consists of amendments to Rule G–37, on political contributions and prohibitions on municipal securities business, Rule G–8, on recordkeeping, Rule G–9, on preservation of records, and G–38, on consultants. In addition, the MSRB submitted new proposed Form G–37x. On December 3, 1998, the Board filed Amendment No. 1 which superseded the original proposal.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on January 5, 1999.[4] The Commission received one comment on the proposal.[5] This order approves the proposal, as amended.

II. Description of the Proposal

Rule G–37 prohibits a broker, dealer, or municipal securities dealer (''dealer'') that effects transactions in municipal securities from engaging in municipal securities business[6] with an issuer within two years after certain contributions (other than certain *de minimis* contributions) to an official of an issuer made by the dealer, any municipal finance professional (''MFP'') associated with such dealer or any political action committee (''PAC'') controlled by the dealer or any MFP. In addition, Rules G–37 and G–38 require dealers to make disclosures of certain contributions to issuer officials payments to state and local political parties, consultant arrangements and municipal securities business on Form G–37/G–38. Rule G–8 requires dealers to create records of contributions, payments, consultants, and issuers with which the dealer has engaged in municipal securities business and Rule G–9 requires dealers to preserve these records for a period of at least six years.

Currently, every dealer is obligated to comply with the reporting requirements of Rule G–37 by submitting Form G–37/G–38 to the Board on a quarterly basis and to undertake the related recordkeeping obligations under Rule G–8, even if a dealer does not engage in municipal securities business.[7]

Upon review of the first four years of operation on Rule G–37, the Board believes that requiring dealers that do not engage in municipal securities business to comply with these disclosure and recordkeeping obligations does not substantially further Rule G–37's stated purpose of exposing to public scrutiny contributions and payments that may be linked to the awarding of municipal securities business. The Board believes that Rule G–37 has been successful in reducing the number of political contributions used to gain awards of municipal securities business. The Board stated that it continues to be vigilant in prohibiting improper political contributions from affecting the awarding of municipal securities business.

Therefore, the Board has proposed certain amendments to Rules G–37 and G–8 to exempt dealers that do not engage in municipal securities business from reporting and recordkeeping obligations.[8] Dealers invoking this new exemption (hereinafter referred to as the ''No Business Exemption'') will be required to meet two preconditions and will be subject to a third requirement if they later begin engaging in municipal securities business. To invoke the No Business Exemption, a dealer must: (1) not have engaged in municipal securities business for a period of at least two years; and (2) submit to the Board the new Form G–37x. If the dealer thereafter begins to engage in municipal securities business, it would become subject to a disclosure and recordkeeping look back requirement (hereinafter referred to as the ''Look Back Requirement'') that will obligate the dealer to create records of, and to disclose on Form G–37/G–38, certain contributions made to issuer officials and payments to state and local political parties made during the preceding two year period.

The Board has also proposed an amendment to Rule G–37 which codifies a previously recognized exemption to the Form G–37/G–38 submission requirement for any quarter in which a dealer has no information to report (hereinafter referred to as the ''No Information Exemption''). The Board also proposed certain technical amendments to consolidate the provisions currently found separately in Rules G–37 and G–38 relating to the submission of Form G–37/G–38, to clarify Rule G–37 by eliminating certain cross-referencing to Rule G–8, and to provide for the maintenance and preservation under Rules G–8 and G–9 of any Forms G–37x submitted to the Board.

a. No Business Exemption for Dealers Not Engaged in Municipal Securities Business

A dealer that qualifies for the No Business Exemption under amended Rule G–37(e)(ii)(A)(2) will not be required to report information to the Board on Form G–37/G–38 regarding contributions to issuer officials and payments to state and local political parties and will not be required to create records of these contributions and payments pursuant to new clause (K) of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The original proposal did not require Rule G–37 disclosures by dealers who have not engaged in municipal securities transactions for 2 years. In addition, the original proposal would not have required dealers subject to reporting requirements to make any filing in the event they had nothing to disclose. After discussions between the Commission and the MSRB, the MSRB filed Amendment No. 1. While the revised proposal maintains the exemptions to the disclosure requirements, it includes a dealer certification as a precondition to the effectiveness of the exemptions created in the original proposal.

[4] Securities Exchange Act Release No. 40845 (December 28, 1998), 64 FR 539.

[5] *See* letter from Sarah M. Starkweather, Vice President and Associate General Counsel, The Bond Market Association, to Mr. Jonathan G. Katz, Secretary, SEC, dated January 26, 1999. The comment letter supported the proposed rule change.

[6] Municipal securities business is defined in Rule G–37 to encompass certain activities of dealers in connection with primary offerings of municipal securities, such as acting as an underwriter in a negotiated sale, as a placement agent, or as a financial advisor, consultant or remarketing agent to an issuer in which the dealer was chosen on a negotiated basis.

[7] The range of activities encompassed by the term municipal securities business is significantly narrower than the types of activities that can cause a dealer to be subject to the obligation to comply with Board Rules. For example, a dealer that effects municipal securities transactions that are limited to secondary market trades for its customers or underwriting of new issues solely through competitive sales is not, by effecting such transactions, engaging in municipal securities business within the meaning of Rule G–37. However, the dealer is still required to undertake the disclosure and recordkeeping obligations under current Rules G–37 and G–8 with respect to contributions and payments.

[8] This exemption would not extend to the reporting requirements under Rule G–38. Therefore, as amended, the rule would continue to require submission of information on Form G–37/G–38 concerning the use of consultants pursuant to Rule G–38.

Rule G–8(a)(xvi).[9] If a dealer engages in municipal securities business after invoking the No Business Exemption, the dealer will become subject to the Look Back Requirement under new paragraph (iii) of Rule G–37(e).

i. No Municipal Securities Business for at Least Two Years

The first proposed condition for invoking the No Business Exemption in any calendar quarter, as set forth in amended Rule G–37(e)(ii)(A)(2)(a), is that the dealer must not have engaged in municipal securities business during the calendar quarter and during the seven consecutive calendar quarters immediately preceding the calendar quarter. Any dealer that has previously engaged in municipal securities business may qualify for the No Business Exemption if it has ceased business for the requisite period of time. In addition, any dealer that has never engaged in municipal securities business may also qualify for the No Business Exemption, regardless of how long the dealer has been in existence.[10]

ii. Submission of Form G–37x

The second proposed condition for invoking the No Business Exemption, as set forth in amended Rule G–37(e)(ii)(A)(2)(b), is that the dealer must have sent, by certified or registered mail or some other equally prompt means that provides a record of sending, two copies of new Form G–37x to the Board. Form G–37x would include a certification that the dealer did not engage in municipal securities business during the eight consecutive calendar quarters immediately preceding the date of the certification. A Form G–37x submitted to the Board would remain in effect for so long as the dealer continues to refrain from engaging in municipal securities business.[11] Notwithstanding the submission of Form G–37x, a dealer will remain responsible for determining whether it continues to qualify for an exemption from the Form G–37/G–38 submission for each calendar quarter.[12]

The Board will make available to the public all Forms G–37x that are submitted to the Board in the same manner currently used for G–37/G–38. They will be available for review and photocopying at the Board's Public Access Facility in Alexandria, Virginia and will be posted on the Board's Internet Web site (http://www.msrb.org). The forms will also be available in CD–ROM format on a quarterly basis.[13]

ii. Look Back Requirement Upon Engaging in Municipal Securities Business

The Board stated that a dealer that has invoked the No Business Exemption but later begins engaging in municipal securities business will become subject to a two-part Look Back Requirement under proposed paragraph (iii) of Rule G–37(e). First, the proposed Look Back Requirement provides that the dealer must create records of political contributions and payments to state and local political parties under Rule G–8(a)(xvi) for the current calendar year and the two preceding calendar years and must continue to create such records thereafter unless the dealer again qualifies for, and invokes, the No Business Exemption.[14] The dealer will be responsible for reviewing the newly created records to ensure that it has not been banned from business with an issuer as a result of a contribution to an official of the issuer during the No Business Exemption period, before the dealer engages in municipal securities business with the issuer.

Moreover, the Board stated that a dealer that engages in municipal securities business after invoking the No Business Exemption must disclose all reportable contributions to issuer officials and payments to state and local political parties made during the preceding two years by the dealer, any MFP, and non-MFP executive officer or any dealer-controlled or MFP controlled PAC, not reported previously because of the No Business Exemption.[15] These disclosures must be made on Form G–37/G–38 for the calendar quarter during which the dealer first engages in municipal securities business. The dealer will also be required to send Form G–37/G–38 to the Board for each calendar quarter thereafter unless the dealer qualifies for the No Information Exemption or again qualifies for, and invokes, the No Business Exemption.

The Board explained that the Look Back requirement is intended to prevent circumvention of the rule and to promote public scrutiny of all contributions to issuer officials and payments to state and local political parties (other than qualifying *de minimis* contributions and payments) that may influence the awarding of municipal securities business to any dealer that is newly engaging in, or is again becoming engaged in, municipal securities business.

The Board stated that the No Business Exemption is best suited to dealers that do not intend to engage in municipal securities business in the foreseeable future. Thus, the Board asserted that dealers that qualify for the No Business Exemption but plan to engage in municipal securities business at a later time should carefully consider whether

[9] Dealers will still be required to maintain copies of any Forms G–37/G–38 submitted to the Board during the period of exemption (*e.g.*, in connection with information relating to the use of consultants) and of any Forms G–37x submitted to the Board to invoke the No Business Exemption. In addition, the recordkeeping exemption would not entitle a dealer to discontinue preservation of any records previously created under Rule G–8(a)(xvi) unless the period for preserving the records under Rule G–9(a)(viii) has lapsed.

[10] For this purpose, the Board will deem that a dealer that has been subject to the rules of the Board for a period of less than two years (for example, because it came into existence during such period or because it previously effected only non-municipal securities transactions) and has not engaged in any municipal securities business since becoming subject to Board rules would automatically satisfy the two-year requirement of the No Business Exemption.

[11] Thus, the Board explained, if after submitting Form G–37x, the dealer undertakes any municipal securities business (thereby subjecting itself to the Look Back Requirement) and thereafter again seeks to invoke the No Business Exemption after a new two-year period of not engaging in municipal securities business, the dealer would be required to submit a new Form G–37x. The Commission believes that dealers should carefully consider the advisability of alternating between periods of undertaking municipal securities business and periods of invoking the No Business Exemption, particularly in view of the potential difficulties of complying with the strict Look Back Requirement.

[12] The Board explained that a dealer must continually determine whether it has met the requirement for the No Business Exemption or the No Information Exemption for each quarter. Moreover, a dealer will still be required to submit Form G–37/G–38 for any calendar quarter in which it has information to report regarding consultants under Rule G–38 even if it continues to qualify for the No Business Exemption.

[13] CD–ROMS are currently priced at $10.00 (plus delivery or postage charges and any applicable sales tax) for each CD–ROM containing copies of Form G–37/G–38 and at $11.50 (plus delivery or postage charges and any applicable sales tax) for each CD–ROM that is bundled with the software necessary to access and read the forms on a computer. *See* Securities Exchange Act Rel. No. 39488 (December 23, 1997), 63 FR 280 (January 5, 1998). The Board anticipates that Forms G–37x will be included on these CD–ROMs at no additional cost.

[14] The Board explained that a dealer that is creating records under the Look Back Requirement must re-create the records that it would have made during the current calendar year and the two preceding calendar years but for the No Business Exemption. This includes the political contributions and payments to state and local political parties made by an individual who was an MFP or a non-MFP executive officer during this look back period. The dealer must also create records of the contributions and payments of individuals who become MFPs or non-MFP executive officers during the look back period. Rule G–37 does not require a dealer to create records of contributions or payments made prior to the look back period.

[15] When reporting prior contributions and payments on the calendar quarter's Form G–37/G–38, a dealer will be required to include the year and calendar quarter in which each such prior contribution or payment was made. A dealer, however, will not be required to include contributions or payments made more than two years prior to such quarter, even if not previously reported to comply with Rule G–37.

the burden of having to comply with the Look Back Requirement outweighs the short term benefit of not having to create and maintain these records and not having to submit Form G–37/G–38 on a current basis. The Look Back Requirement may cause great burden to dealers that must recreate at least two full years of records under Rule G–8(a)(xvi). Dealers also run the risk of unknowingly becoming banned from municipal securities business as a result of a contribution made to an issuer official during the exemption period. Any dealer that engages in municipal securities business after invoking the No Business Exemption should be prepared to produce evidence that it has created records and disclosed information required under the Look Back Requirement.

iv. No effect on Disclosure and Recordkeeping Obligations Relating to Consultants

The use of consultants in attempting to obtain municipal securities business is required to be disclosed to the Board pursuant to Rule G–38. The proposed rule change amends Rule G–37(e)(ii)(B) to require this disclosure to be reported on Form G–37/G–38 even during periods when a dealer qualifies for the No Business Exemption. This amendment requires that dealers report to the Board their use of consultants to obtain municipal securities business during the no business period. The submission of Form G–37/G–38 in any quarter will not cause the No Business Exemption or the related Form G–37x submission to lapse unless the dealer engages in municipal securities business. The Board suggested that any dealer that has retained a consultant to obtain municipal securities business carefully consider the advisability of invoking (or continuing to invoke) the No Business Exemption. If business is obtained as a result of a consultant's efforts, then, the dealer will need to comply with the Look Back Requirement, and in particular, confirm that it is not banned from undertaking municipal securities business with that issuer.

v. No Effect on Two-Year Ban on Municipal Securities Business or Prohibition of Certain Solicitation and Coordination Under Rule G–37(b) and (c)

The proposed rule change and the new No Business Exemption do *not* provide exemptions from the operation of sections (b) and (c) of Rule G–37.[16] Therefore, a political contribution (other than an MFP's *de minimis* contribution) to an official of an issuer that was not disclosed on Form G–37/G–38 and not recorded under Rule G–8(a)(xvi) by virtue of the No Business Exemption could cause a ban on municipal securities business with such issuer under section (b). Moreover, solicitation or coordination of contributions to an official of an issuer with which the dealer is seeking to engage in muncipal securities business continues to be prohibited under section (c) even if the No Business Exemption is in effect. Dealers that qualify for the No Business Exemption but are considering future municipal securities business are directed to be aware of the continuing applicability of section (b) and (c) of Rule G–37.

b. No Information Exemption for Dealers With No Information to Report in a Quarter

The proposed rule change amends Rule G–37(e)(ii)(A)(1) to codify a previously recognized No Information Exemption to the quarterly Form G–37/G–38 submission requirement.[17] The proposed amendment provides that a dealer would not be required to send Form G–37/G–38 to the Board for any calendar quarter in which *all* of the following apply: (1) the dealer has not engaged in municipal securities business; (2) the dealer has no reportable political contributions to issuer officials or payments to state and local political parties; and (3) the dealer has no reportable use of consultants. This No Information Exemption will continue to obviate the need for a dealer to submit a Form G–37/G–38 that does not reflect reportable activity under any category. However, a dealer is required to send Form G–37/G–38 to the Board in any subsequent calendar quarter in which it does not qualify for the No Information Exemption, unless the dealer qualifies for, and invokes, the No Business Exemption.[18]

c. Technical Amendments

Amend Rule G–37(e)(i) consolidates the Form G–37/G–38 submission procedures that are currently found separately in paragraphs (i) and (ii) of Rule G–37(e) and in Rule G–38(d). The proposal also contains certain related amendments to Rule G–38(d).

In addition, the existing exemption from reporting requirements under Rule G–37 for *de minimis* contributions made by MFPs and non-MFP executive officials of issuers[19] and to state and local political parties[20] is effected by a cross-reference to the recordkeeping requirements of Rule G–8(a)(xvi). To clarify the nature of such *de minimis* exemptions, amended Rule G–37(e)(i)(A) incorporates into the language of Rule G–37, but does not change, the specific requirements of the *de minimis* exemption.

d. Amendments Relating to Records of Form G–37x

The proposed rule change amends section H of Rule G–8(a)(xvi) to require that dealers maintain copies of Form G–37x submitted to the Board along with the corresponding records of sending. Under amended Rule G–9(a)(viii), dealers will be required to keep copies of Form G–37x during the period of effectiveness and for at least six years following the end of effectiveness.

III. Discussion

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.[21] In particular, the Commission finds that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act.[22] Section 15B(b)(2)(C) of the Act, requires,

[16] Section (b) provides that no dealer shall engage in municipal securities business with an issuer within two years after any contribution to an official of such issuer made by the dealer, an MFP or a PAC controlled by the dealer or MFP. Section (c) provides that no dealer or MFP shall solicit any person or PAC to make any contribution, or shall coordinate any contributions, to an official of an issuer with which the dealer is engaging or seeking to engage in municipal securities business.

[17] *See* Securities Exchange Act Release No. 34161 (June 6, 1994), 59 FR 30379 (June 14, 1994), Question and Answer No. 34, *See also, MSRB Reports,* Vol. 14, No. 3 (June 1994) at 15–16, and ''Instructions for Completing and Filing Form G–37/G–38,'' reprinted in *MSRB Reports,* Vol. 16, No. 1 (January 1996) at 11.

[18] A dealer that qualifies for the No Business Exemptions may, however, be required to submit G–37/G–38 if such dealer has engaged consultants to obtain municipal securities business, pursuant to Rule G–38.

[19] A *de minimis* contribution to an official of an issuer not requiring disclosure consists of a contribution made by an MFP or non-MFP executive officer to an official of an issuer for whom the person is entitled to vote if all contributions by the person to such official, in total, do not exceed $250 per election.

[20] A *de minimis* payment to a political party of a state or political subdivision not requiring disclosure consists of a payment made by an MFP or a non-MFP executive officer to a political party of a state or political subdivision in which the person is entitled to vote if all payments by the person to the political party, it total, do not exceed $250 per year.

[21] In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. The proposed rule change should improve efficiency because it reduces the filing and recordkeeping burden of municipal securities dealers who do not engage in municipal securities business. In addition, the proposed rule change should maintain fair competition because all municipal securities dealers continue to be prohibited from improper business solicitations. 15 U.S.C. 78f(b)(7).

[22] 15 U.S.C. 78o–4(b)(2)(C).

among other things, that the rules of the Board be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

a. The No Business Exemption

The Commission finds that the No Business Exemption is consistent with the requirements of Section 15B(b)(2)(C) of the Act because it removes impedients to and perfects the meachanism of a free and open market in municipal securities. After these rules have been implemented, dealers that have been engaged in municipal securities business for at least two years will not be required to report information to the Board regarding contributions to issuer officials or payments to state and local political parties. Furthermore, dealers will not be required to create contribution and payment records.[23] By eliminating these requirements, those dealers who are not engaged in municipal securities business will be relieved of reporting and recordkeeping burdens, which according to the MSRB do not substantially further the stated purpose of Rule G–37. By imposing a ban on dealers that make financial contributions to issuers, the rule ensures that municipal securities business is awarded based upon the business judgment of the issuer and not improper financial incentives. Thus the Commission agrees that the reporting requirments, amended by this proposal, imposed on dealers that do not engage in municipal securities business do not further this purpose and removing these reporting burdens should allow dealers to concentrate on their other municipal securities.

Once a dealer qualifies for the No Business Exemption, the dealer will be required to submit new Form G–37x. The requirement of submitting the new Form G–37x is also consistent with the requirements of Section 15B(b)(2)(C) of the Act because it provides for the protection of investors and the public interest. The public will be able to access and review all Form G–37x's that are filed and the Board providing notice of the status of dealers. Filing Form G–37x is an affirmative representation by the dealer certifying that it has not engaged in municipal securities business for a least two years.

If a dealer begins or reenters the municipal securities business, it will be subject to the Look Back Requirement. The Look Back Requirement is consistent with the requirements of Section 15B(b)(2)(C) because it ensures that dealers that begin or reenter the municipal securities business are able to engage in such business with issuers in compliance with Rule G–37. The Look Back Requirement requires dealers to recreate and file records of political contributions and payments to state and local political parties for the current calendar year and the preceding two calendar years. These dealers will then be obligated to review these recreated records to ensure that they are in fact eligible to engage in municipal securities business with certain issuers. The Look Back Requirement should protect investors and the public interest because it should ensure that dealers only engage in municipal securities business with issuers to which they have not made contributions. It also allows public scrutiny of contributions to issuer officials and payments to state and local political parties that may improperly influence the award of municipal securities business.

Under the proposed rule change, dealers must continue to report the use of consultants to obtain municipal securities business. The proposed rule change affirmatively states in proposed Rule G–37(e)(ii)(B) that dealers will continue to be obligated to submit Form G–37/G–38 regarding the use of consultants to obtain municipal securities business even during periods when the dealer qualifies for the No Business Exemption. This is consistent with the Act because the public will be able to monitor the dealers that engage consultants to determine if the dealer is considering entering or reentering the municipal securities business, which should help protect investors.

The proposed rule change is also consistent with the requirements of Section 15B(b)(2)(C) of the Act because it removes impediments to and perfects the mechanisms of a free and open market in municipal securities. The proposed rule change should allow those dealers not engaging in municipal securities business to concentrate their business efforts on other municipal securities transactions that are pertinent to these dealers' businesses. It releases these dealers from the recordkeeping and reporting requirements of the MSRB rules and should provide them with flexability to engage in business ventures not defined as municipal securities business.

Finally, the Commission is satisfied that the proposed rule change should continue to further the purposes of Rule G–37. The proposed rule change does not provide exemptions from the two-year ban under Rule G–37(b) for dealers that have made contributions to officials of issuers or from the restrictions under Rule G–37(c) which prohibit dealers from soliciting others to make contributions to officials of issuers with which the dealer is engaging or seeking to engage in municipal securities business. The proposed rule change should continue to ensure that municipal securities business is not awarded based on improper financial incentives, which should prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest, consistent with the requirements of Section 15B(b)(2)(c).

b. The No Information Exemption

The Commission finds the No Information Exemption consistent with the requirements of Section 15B(b)(2)(C) of the Act because it removes impediments to and perfects the mechanisms of a free and open market in municipal securities. Dealers who are not engaged in municipal securities business, have not made any reportable contributions or payments, and have not engaged consultants to obtain municipal securities business, will no longer be required to file a Form G–37/G–38 with the Board. This proposed rule change also relieves the reporting burdens of dealers that are not engaged in municipal securities business allowing them to concentrate on other municipal securities activities. Moreover, the No Information Exemption should not harm investors and the public interest because the proposed rule change only obviates the need to report that the dealer does not have any information to report. However, once a dealer engages in municipal securities business or uses consultants to obtain municipal securities business, its reporting obligations again become mandatory.

c. Technical Amendments

The proposed rule change contains technical amendments which provide cross references and consolidations to the proposed rule changes. These technical amendments are consistent with Section 15B(b)(2)(C) of the Act because they promote just and equitable principles of trade by providing clarity to the rules of the Board which govern the actions of dealers of municipal securities.

[23] As noted above, dealers will continued to be required to create contribution and payment records if they are engaged in municipal securities business. If a dealer reenters the municipal securities business, it will be subject to the Look Back Requirement. The Commission stresses that the amendments to the reporting and filing requirements approved today are not to be used as a means of avoiding deisclosure of financial payments to issuers and political parties.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2)[24] of the Act, that the proposed rule change, as amended, (SR–MSRB–97–12) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–3511 Filed 2–11–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41026; File No. SR–NASD–99–10]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to an Amendment to the Composition of Boards of NASD Regulation, Inc. and the Nasdaq Stock Market, Inc.

February 8, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 3, 1999, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend the By-Laws of the NASD Regulation, Inc. (''NASD Regulation'') and The Nasdaq Stock Market, Inc. (''Nasdaq'') to increase the possible size of the Board of Directors of those corporations. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletion are in brackets.

Proposed Revisions to the NASD Regulation, Inc. By-Laws

ARTICLE IV

Number of Directors

Sec. 4.2 The Board shall consist of no fewer than five and no more than [eight] *ten* Directors, the exact number to be determined by resolution adopted by the Stockholder of NASD Regulation from time to time. Notwithstanding the preceding sentence, the number of Directors shall equal the number of Directors on the Nasdaq Board. Any new Director position created as a result of an increase in the size of the Board shall be filled *pursuant to* [as part of the annual election conducted under] Section 4.4.

Qualifications

Sec. 4.3 (a) Directors need not be stockholders of NASD Regulation. Only Governors of the NASD Board shall be eligible for election to the Board. The number of Non-Industry Directors shall equal or exceed the number of Industry Directors plus the President. The Board shall include the President and the National Adjudicatory Council Chair, representatives of an issuer of investment company shares or an affiliate of such an issuer, and an insurance company or an affiliated NASD member. *If t*[T]he Board *consist of five to seven Directors, it* shall include at least one Public Director.[, unless the Board consists of eight Directors. In such case] *If the Board consists of eight Directors,* at least two Directors shall be Public Directors *and if the Board consists of ten Directors at least three shall be Public Directors.* The Chief Executive Officer of the NASD shall be an ex-officio non-voting member of the Board.

(b) No change.

Proposed Revisions to The Nasdaq Stock Market, Inc. By-Laws

ARTICLE IV

Definitions

Number of Directors

Sec. 4.2 The Board shall consist of no fewer than five and no more than [eight] *ten* Directors, the exact number to be determined by resolution adopted by the stockholder of Nasdaq from time to time. Notwithstanding the preceding sentence, the number of Directors shall equal the number of Directors on the NASD Regulation Board. Any new Director position created as a result of an increase in the size of the Board shall be filled *pursuant to* [as part of the annual election conducted under] Section 4.4.

Qualifications

Sec. 4.3 Directors need not be stockholders of Nasdaq. Only Governors of the NASD Board shall be eligible for election to the Board. The President of Nasdaq shall be a Director. The number of Non-Industry Directors, including at least one Public Director and at least one issuer representative, shall equal or exceed the number of Industry Directors plus the President[.]. *unless the Board consists of ten Directors. In such case at least two Directors shall be issuer representatives.* The Chief Executive Officer of NASD shall be an ex-officio non-voting member of the Board.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to provide the NASD with more flexibility in determining the size of the boards of directors of its subsidiaries, NASD Regulation and Nasdaq, while maintaining the balance between non-industry and industry members contained in the current By-Laws of those subsidiaries. The proposed rule change will allow the NASD and its subsidiaries to accommodate additional constituencies and the larger number of NASD Board members that resulted from the recent reconfiguration of the NASD Board to accommodate the structure resulting from the NASD's recent merger with the American Stock Exchange. In addition to increasing the permissible size of the subsidiary boards, the proposed rule change will provide for additional public representation on the NASD Regulation Board and additional issuer representation on the Nasdaq Board should the size of the boards be increased to ten.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the

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[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

provisions of Section 15A(b)(4)[3] of the Act, which requires, among other things, that the Association's rules be designed to assure a fair representation of its members in the administration of its affairs. The NASD believes that the proposed rule change enhances the Association's ability to assure fair representation in that it provides the NASD with the discretion to increase the size of its subsidiary boards to allow representation of additional constituencies while preserving the fundamental compositional requirements of those boards.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD represents that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The NASD has neither solicited nor received comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–99–10 and should be submitted by March 5, 1999.

[3] 15 U.S.C. 78o(b)(4).

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change relating to amending the composition of the NASD Regulation and Nasdaq boards is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association. Specifically, the Commission believes the proposal is consistent with the Section 15A(b)(4)[4] requirements that the Association's rules be designed to assure a fair representation of its members in the administration of its affairs.[5] In particular, the Commission notes that the NASD has not altered the balanced composition of each subsidiary board.

The Commission finds good cause for approving the rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission believes that accelerated approval will facilitate the formation of the NASD subsidiary boards in a manner that will better represent the constituencies' presence on the NASD parent board.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–NASD–99–10) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–3512 Filed 2–11–99; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78o(b)(4).

[5] In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78s(b)(2).

[7] 15 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3157]

State of Ohio (and Contiguous Counties in Indiana)

Preble County and the contiguous Counties of Butler, Darke, and Montgomery in the State of Ohio, and Union and Wayne Counties in the State of Indiana constitute a disaster area as a result of damages caused by flooding that occurred on January 19 and 20, 1999. Applications for loans for physical damages from this disaster may be filed until the close of business on April 5, 1999 and for economic injury until the close of business on November 2, 1999 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.375
Homeowners without credit available elsewhere	3.188
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.000
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 315706 for Ohio and 315806 for Indiana.

For economic injury the numbers are 9B0200 for Ohio and 9B0300 for Indiana.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: February 2, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–3550 Filed 2–11–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 2978]

Bureau of European Affairs; U.S. Bilateral Assistance to Bosnia and Serbia

The Secretary of State issued on November 30, 1998, a waiver of restrictions under Section 570 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1999, for bilateral assistance to the Republika Srpska (RS) and Serbia (including Kosovo), as follows:

(1) *In the Republika Srpska:* support for civilian police restructuring; USIA programs promoting democratization, reconciliation, and free and independent media; the Municipal Infrastructure and Services Program of USAID, as well as its Bosnia Business Development, Economic Reform and Democratic Reform Programs; OSCE-supervised elections and human rights activities; and Trade and Development Agency (TDA) activities designed to assist U.S. businesses in Bosnia.

(2) *In Serbia:* USIA- and USAID-funded programs to support democratic reform, including free and independent media and labor in Serbia; USIA- and USAID-funded programs to support humanitarian aid, reconstruction, technical assistance, infrastructure repair, and democratization in the province of Kosovo.

The Secretary noted that, ''Our bilateral assistance promotes Dayton and an integrated Bosnia. Recipients of U.S. assistance must state in writing their support for Dayton and then act accordingly. Our assistance has promoted the growth of pro-Dayton parties in the RS, the development of independent media, the beginning of minority returns, redirection of the RS economy toward privatization and reform, and efforts to investigate corruption and curb police abuse.* * * Assistance programs for Serbia would be narrowly targeted to advance independent media and human rights. As for Kosovo, the full range of assistance programs is needed to support the negotiating efforts * * * directed at strengthening the cessation of hostilities and rebuilding civil society in that province.''

Section 570 requires monthly publication of ''a listing and justification of any assistance that is obligated within that period of time for any country, entity, or canton described in subsection (3), including a description of the purpose of the assistance project and its location, by municipality.''

The following data from USIA and USAID, for funds obligated during December 1998–January 1999, are the first submissions in fulfillment of this reporting requirement.

For Further Information Contact: Office of the SEED Coordinator, Department of State, 2101 C St NW, Washington, DC 20521, 202–647–0853.

Dated: February 2, 1999.

Larry C. Napper,

SEED Coordinator.

USAID: BOSNIA/REPUBLIKA SRPSKA

Following list gives, in order, Date of Obligation, Amount of Obligation, Project Number, Project Title, Description of Activity, Justification of Assistance, Location

12/17/98 $2,200,000 180–0014 Privatization & Enterprise Restructuring
Provide business consulting services to Bosnian firms.
Supports development of private sector economy.
Primarily in US SFOR AOR, Central Bosnia, Western RS, and Sarajevo.

01/12/99 $3,000,000 180–0014 Privatization & Enterprise Restructuring
Provide technical assistance to BiH in support of privatization.
Creates broader economic base for sustainable economic activity.
National level program providing support at Entity level. Estimated 50% of funding for work in RS.

1/15/99 $50,000 180–0014 Privatization & Enterprise Restructuring
FSN Contract
Project management for privatization process in RS.
Position based in Banja Luka.

12/9/98 $126,362 180–0058 Municipal Infrastructure & Services
USPSC Engineer.
Project management.
Position based in Banja Luka.

10/22/98 $40,000 968–7602 Bosnia-Herzegovina Transition Initiative
Provides small, democracy-building grants to ind. media, civil society organizations.
Supports indigenous democracy-building efforts throughout Bosnia-Herzegovina (includes RS)

12/04/98 $120,000 968–7602 Bosnia-Herzegovina Transition Initiative

12/24/98 $130,851 AOT–S–00–99–00023–00 Bosnia-Herzegovina Transition Initiative

USAID: SERBIA

10/20/98 $320,000 968–3045 Kosovo Verification Monitoring
Indefinite quantity contract for verification monitoring in Kosovo.
International Disaster Assistance for displaced people in Kosovo. Kosovo, Regional-Wide

11/19/98 $559,000 968–3045 Kosovo Health Clinics
Grant to Medicins du Monde for mobile health clinics in Kosovo.
International Disaster Assistance for displaced people in Kosovo. Kosovo, Regional-Wide

11/25/98 $432,477 968–3045 Kosovo Food Distribution
Grant to World Food Programme for food distribution in Kosovo.
International Disaster Assistance for displaced people in Kosovo. Kosovo, Regional-Wide

11/17/98 $470,912 968–3045 Kosovo Winterization Program
Grant to CARE for an emergency winterization program in Drenica Triangle and Sbrica.
International Disaster Assistance for displaced people in Kosovo. Kosovo, Regional-Wide

12/01/98 $823,270 968–3045 Kosovo Water and Sanitation
Grant to International Rescue Committee for water, sanitation and geographic information system.
International Disaster Assistance for displaced people in Kosovo. Kosovo, Regional-Wide

12/04/98 $177,220 968–3045 Kosovo Winterization Program
Grant to International Rescue Committee for accelerated winterization program in Kosovo for internally displaced families.
International Disaster Assistance for displaced people in Kosovo. Kosovo, Regional-Wide

12/18/98 $450,000 180–0021 Political & Social Process
Social Process Activities
Increase capabilities of independent trade unions. Central Serbia, Kosovo, Montenegro

10/21/98 $100,000 968–7610 Serbia-Montenegro Transition Initiative
Provides small, democracy-building grants to ind. media, civil society organizations, and community improvement initiatives
Supports indigenous democracy-building efforts. Throughout FRY (including Kosovo)

10/22/98 $5,579 TA0009900001960 Serbia-Montenegro Transition Initiative

10/22/98 $5,579 TA0009900001970 Serbia-Montenegro Transition Initiative

10/22/98	$5,579	TA0009900001980	Serbia-Montenegro Transition Initiative
12/01/98	$100,000	968–7610	Serbia-Montenegro Transition Initiative
12/24/98	$5,301,881	AOT–C–00–96–90067–13	Serbia-Montenegro Transition Initiative
1/12/99	$6,305	AOT–000–99–00012–910	Serbia-Montenegro Transition Initiative
1/12/99	$200,000	968–7610	Serbia-Montenegro Transition Initiative

USIA: BOSNIA/SERBIA

Following list gives, in order, Date of Obligation, Amount of Obligation, Project Title

12/15/98	$8,875	TV News Production Workshop in Washington, DC and Tucson, Arizona for RS journals	
1/12/99	$3,743	Free Press	The Democracy Commission in Serbia awarded a small grant to the independent station Radio Jasenica in the central Serbian city of Smederevska Palanka. The grant purchased radio equipment needed to the station to ensure continuous operation.
1/12/99	$11,024	Free Press	The Democracy Commission in Serbia awarded a small grant to the Committee for Human Rights. The grant purchased a PC and covered the costs of publishing the newsmagazine for one year. Leskovac, Serbia.
1/12/99	$24,000	Free Press	The Democracy Commission in Serbia awarded a small grant to the Radio-Television. The grant covered the costs to install a TV broadcasting antenna to enable parts of Belgrade to receive independently produced television news programs.
1/12/99	$8,000	Free Press	The Democracy Commission in Serbia awarded a small grant to the newsmagazine ''KRUG''. The grant covered the cost of printing two issues of the independent bi-weekly. Belgrade, Serbia.
1/12/99	$5,000	Free Press	The Democracy Commission in Serbia awarded a small grant to Radio Budva. The grant purchased a PC and studio equipment for the local radio station. Montenegro.
1/12/99	$1,939	NGO Development	The Democracy Commission in Serbia awarded a small grant to the NGO Business Center for Women. In support of the Center's efforts to provide professional counseling and training to women entrepreneurs, the grant purchased office equipment.
1/12/99	$4,850	Free Press	The Democracy Commission in Serbia awarded a small grant to Fedra Foundation for Children. The grant purchased an antenna and office equipment for their independent radio station Radio 023 Fedra. Vojvodina.
1/12/99	$22,048	Media	The Democracy Commission in Serbia awarded a small grant to the Media Project Pristina. The grant covered one year's office rent, utilities, and salary for an administrative assistant. The Project is the only training program in Kosovo for young Albanian female journalists. Kosovo.
1/12/99	$116,900	Free Press	The Democracy Commission in Serbia awarded a small grant to the ''Bujku.'' The grant covered the costs of newsprint and receiving Reuters news service for three months for the Albanian-language daily newspaper. Kosovo.
Total:	$106,379	Period covered for this report 12/1/98–1/15/99	

[FR Doc. 99–3445 Filed 2–11–99; 8:45 am]
BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice # 2966]

Advisory Committee on International Communications and Information Policy Meeting Notice

The Department of State is holding the next meeting of its Advisory Committee on International Communications and Information Policy. The Committee provides a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communication services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of international organizations with regard to communications and information, and developing country interests.

The purpose of the meeting will be for the members to look at the substantive issues on which the committee should focus, as well as specific countries and regions of interest to the committee.

This meeting will be held on Thursday, March 11, 1999, from 9:30 a.m.–12:30 p.m. in Room 1912 of the Main Building of the U.S. Department of State, located at 2201 ''C'' Street, NW, Washington, DC 20520. Members of the public may attend these meetings up to

the seating capacity of the room. While the meeting is open to the public, admittance to the State Department Building is only by means of a pre-arranged clearance list. In order to be placed on the pre-clearance list, please provide your name, title, company, social security number, date of birth, and citizenship to Shirlett Brewer at (202) 647–8345 or by fax at (202) 647–0158. All attendees must use the ''C'' Street entrance. One of the following valid ID's will be required for admittance: any U.S. driver's license with photo, a passport, or a U.S. Government agency ID.

FOR FURTHER INFORMATION CONTACT: Timothy C. Finton, Executive Secretary of the Committee, at (202) 647–5385 or <fintontc@ms6820wpoa.us-state.gov>.

Dated: February 1, 1999.

Timothy C. Finton,

Executive Secretary.

[FR Doc. 99–3446 Filed 2–11–99; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF STATE

[Public Notice 2977]

Bureau of Administration; Classification Authority Acting Under the Direction of the Senior Agency Official

By virtue of the authority vested in me as the Senior Agency Official designated under Section 5.6 of the Executive Order on Classified National Security Information (EO 12958), and as Under Secretary of State for Management, I hereby authorize and direct the Deputy Assistant Secretary for Records and Publishing Services (A/RPS) to be the official to classify information on a document-by-document basis consistent with the circumstances and procedures described in section 1.8(d) of EO 12958. This authority shall be limited to information that meets the standards of the Order for classification and has not previously been disclosed to the public under proper authority. The Deputy Assistant Secretary shall act under the direction of the Under Secretary for Management and shall keep me apprised of actions taken under this authority.

EFFECTIVE DATE: February 12, 1999.

FOR FURTHER INFORMATION CONTACT: Margaret P. Grafeld, Bureau of Administration, Department of State (202–647–6620).

Dated: February 2, 1999.

Patrick F. Kennedy,

Under Secretary for Management, Acting.

[FR Doc. 99–3444 Filed 2–11–99; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–5080]

International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as Amended; Development of National Performance Measures for Evaluating Mariner Competence

AGENCY: Coast Guard, DOT.

ACTION: Request for participation; request for comments.

SUMMARY: The Coast Guard is seeking volunteers from members of the maritime industry and other interested persons to serve on work groups being formed by the Coast Guard's Merchant Marine Personnel Advisory Committee (MERPAC) to develop national performance measures for evaluating mariner competence. These measures will be used to facilitate implementation of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended in 1995 (STCW). In addition, the Coast Guard seeks comments on the first set of national performance measures developed, which are for basic safety training.

DATES: Requests to participate in a work group must be received by March 1, 1999. Comments regarding the basic safety training performance measures must reach the Docket Management Facility on or before March 15, 1999.

ADDRESSES: Requests to participate in a work group can be submitted in writing to Commandant (G–MSO–1), U.S. Coast Guard, Attn: LCDR George H. Burns III, 2100 Second Street SW, Washington, DC 20593–0001; by telephone 202–267–0550; by fax 202–267–4570; or, by e-mail to *gburns@comdt.uscg.mil.* You may mail comments regarding the basic safety training performance measures to the Docket Management Facility, [USCG–1999–5080], U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this notice. Comments and documents as indicated in this preamble will become part of the docket and will be available for inspection and copying at room PL–401, located on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

A copy of the basic safety training performance measures is available in the public docket at the above address or on the Internet at http://dms.dot.gov, or you may obtain a copy by contacting the project manager at the number in **FOR FUTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: For questions on formation of the work groups please contact Lieutenant Commander George H. Burns III, Maritime Personnel Qualifications Division (G–MSO–1), telephone 202–267–0550, fax 202–267–4570, or e-mail *gburns@comdt.uscg.mil.* Questions regarding the basic safety training performance measures should be directed to Mr. John Bobb, Team Leader, Course Approvals, USCG National Maritime Center (NMC–4B), telephone 703–235–8457; fax 703–235–1062; or e-mail *jbobb@ballston.uscg.mil.* You should continue to address questions concerning the STCW Implementation Focus and Coordination Team to the Team Leader, Captain Robert L. Skewes (G–MSO), telephone 202–267–0212; fax 202–267–4570; or e-mail *rskewes@comdt.uscg.mil.* Questions concerning STCW requirements and enforcement should continue to be directed to the Coast Guard National Maritime Center at (703) 235–0018. Captain William C. Bennett, e-mail *wbennett@Ballston.uscg.mil*, retains responsibility for administering the Mariner Licensing and Documentation Program, including STCW implementation. For questions on viewing or submitting material to the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Background Information

In 1991, the United States became a party to STCW. The primary intent of STCW is to set minimum international qualifications for masters, officers, and watchkeeping personnel on seagoing merchant ships. STCW does not apply to mariners on inland merchant vessels, but does apply to mariners on domestic voyages if the vessel operates beyond the boundary line.

In 1993, the International Maritime Organization (IMO) began a comprehensive revision of STCW to establish more detailed standards of competence for mariners, and to address the increased awareness of human error as a major cause of maritime casualties.

On July 7, 1995, a Conference of Parties adopted a package of amendments to STCW. These amendments went into force on February 1, 1997. Currently, there are 132 parties to STCW representing almost 96 percent of the world's merchant-ship tonnage.

On March 26, 1996, the Coast Guard published a notice of proposed rulemaking (NPRM) in the **Federal Register** (61 FR 13284) on the implementation of the 1995 STCW amendments. We received over 500 comment letters in response to the NPRM and held four public meetings.

The Coast Guard published an interim rule with request for comments in the **Federal Register** on June 26, 1997 (62 FR 34506). The interim rule incorporated the 1995 STCW amendments into U.S. regulation.

The 1995 STCW Amendments require that candidates for certification must establish their competence in a wide range of subjects, depending on the function or functions they will be performing and the level of responsibility they will have on seagoing ships. The STCW amendments include standards of competence in the form of tables that identify areas of knowledge, understanding, and proficiency, which must be demonstrated, and describe general criteria for assessing whether an individual meets the standards. The interim rule, amending 46 CFR Parts 10, 12 and 15, addresses standards by requiring ''practical demonstrations'' in the presence of a ''designated examiner.''

A public listening session was held December 16, 1998 in Washington, D.C. to hear comments regarding implementation requirements for STCW. Over 80 members of the maritime and training communities attended this meeting, which had been announced in the **Federal Register** on November 23, 1998 (63 FR 64752).

Comments raised at the meeting indicated that standard performance measures for the mariner competencies listed in STCW have been difficult to determine. Several comments indicated that national work groups comprised of members of the maritime and training communities would be better able to identify and propose these measures.

Since the interim rule came into force (July 28, 1997), numerous efforts have been initiated to establish performance measures to be used in conducting assessment of an individual's proficiency and skills. These have included efforts undertaken by individual companies and training institutions, as well as broader efforts organized by the Coast Guard's Merchant Marine Personnel Advisory Committee (MERPAC). MERPAC is an advisory committee that provides advice on matters concerning personnel in the U.S. merchant marine such as standards for training, qualifications, certification, and fitness.

MERPAC began to address the need to ensure that all seafarer demonstrations of competency are evaluated using the same minimum guidelines by developing performance measures for one specific competency within STCW: basic safety training. Documentation of basic safety training is necessary for all persons assigned shipboard duties or responsibilities. These measures establish baseline criteria for use in conducting assessments of the required practical demonstrations in the four areas of basic safety training: personal survival techniques, fire prevention and fire fighting, elementary first aid, and personal safety and social responsibility. MERPAC has recommended that the Coast Guard adopt these performance measures for use in the assessment of practical demonstrations. See **ADDRESSES** for a copy of the measures.

Formation of Work Groups

Individuals and organizations involved in developing the performance measures for basic safety training have suggested that the development of these measures for all of the essential competencies identified in STCW is a daunting task. They have suggested that this work could be accomplished much more efficiently if it were shared among those parties interested in ensuring that the STCW requirements are implemented properly in the United States.

In response to these suggestions, the Coast Guard is establishing a network of work groups under MERPAC to carry out the basic work of developing performance measures. These work groups will focus on specific competencies under STCW, with the aim of generating draft national performance measures for further consideration by the industry and the public. The Coast Guard will coordinate these work groups by identifying participants for each group, by suggesting areas of focus, and by providing guidance to promote consistency in the work.

The work groups will develop performance measures for each of the competencies identified in the STCW Convention. These competencies, shown in the order currently considered to be most critical to timely implementation of the Convention, are:

1. Basic Safety Training.
2. Ratings, Navigation Watch.
3. Ratings, Engineering Watch.
4. Officer in Charge (OINC) Navigation Watch > 500GRT.
5. Bridge Teamwork Procedures and Resource Training.
6. OINC Engineering Watch, Manned Engine Room.
7. Designated Duty Engineer, Periodically Manned Engine Room.
8. All Licensed and Unlicensed Competencies; Offshore Supply Industry.
9. OINC Navigation Watch/Master < 500 GRT, Near Coastal.
10. Master and Chief Mate > 500 GRT.
11. Chief and Second Engineer > 3000 KW.
12. All Medical Care & First Aid Training.
13. GMDSS Radio Maintainer and Restricted Operator.
14. All Survival & Rescue Boat Training.
15. Training for roll-on roll-off vessels: Master, Officers, Ratings.
16. Tanker Training: Master, Officers, Ratings.
17. Advanced Fire-Fighting Training.
18. GMDSS Radio Operator.

The work groups will be assembled and will start work immediately following the closing date of March 1, 1999. Each interested party should provide the following information to the point of contact listed in **ADDRESSES:** name, address, telephone and fax numbers, e-mail address, and work group(s) on which he or she would like to participate. Interested parties may participate on more than one work group, provided they are able to meet work group scheduling commitments. The size of each work group may be limited as needed to ensure that the groups remain manageable. Most business of the work groups should be conducted electronically or via mail; however, in cases where face-to-face meetings are feasible, these are welcome as well. Work group members will not be compensated for travel nor time related to work group activity.

Adoption of Performance Measures

The proposed performance measures developed by the work groups will be reviewed by MERPAC and then forwarded to the Coast Guard with their recommendations. The criteria will then be published by the Coast Guard in the

Federal Register for general comment, to allow people and organizations that did not participate on the work group to offer comments on the proposals. Following review of the public comments, the Coast Guard will establish final measures and publish them for general use by training providers in developing and providing courses and programs. The National Maritime Center will consider alternative measures, but will use those adopted by the Coast Guard as accepted minimum performance measures.

Request for Comments on Basic Safety Training

The performance measures for basic safety training were developed by a work group comprised of members of the training and industry community, and were recommended to the Coast Guard for consideration by MERPAC. The Coast Guard now seeks public comment, written data, views or arguments regarding these measures before they are published for general use by the maritime community. Persons submitting comments should include their names and address, identify this notice [USCG–1999–5080] and the specific section of the document to which each comment or question applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the Document Management Facility at the address under **ADDRESSES.** Persons wanting acknowledgement of receipt of comments should enclose stamped self-addressed postcards or envelopes. The Coast Guard will consider all comments received during the comment period.

Dated: February 8, 1999.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–3421 Filed 2–11–99; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–98–4743]

Transportation Equity Act for the 21st Century; Project Selection/Fund Allocation for the Indian Reservation Bridge Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comments.

SUMMARY: Section 1115 of the Transportation Equity Act for the 21st Century establishes a nationwide priority program for improving deficient Indian reservation road (IRR) bridges and reserves $13 million of IRR funds per year to replace and rehabilitate bridges that are in poor condition. The FHWA, Federal Lands Highway Office (FLHO), and the Bureau of Indian Affairs, Division of Transportation (BIADOT), intend to implement the IRR bridge program (IRRBP) to promptly address the deficient IRR bridges. Toward that end, the FLHO and the BIADOT, in consultation with Indian tribal governments, will develop project selection/fund allocation procedures for uniform application of the legislation. The FHWA is announcing its intention to solicit comments on project selection/fund allocation procedures for the IRRBP in written format and through informal consultation with Indian tribal governments and other interested parties. After a series of informal consultation sessions and following review of written comments filed in response to this notice, the FHWA will develop project selection/fund allocation procedures.

DATES: Written comments must be received on or before March 15, 1999.

ADDRESSES: Your signed, written comments must refer to the docket number appearing at the top of this document and you must submit your comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Wade F. Casey, Federal Lands Highway Office, HFL–20, (202) 366–9486; or Ms. Grace Reidy, Office of Chief Counsel, HCC–32, (202) 366–6226; Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded by using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

Background

In order to implement the IRRBP established in section 1115 of the Transportation Equity Act for the 21st Century (TEA–21), Pub. L. 105–178, 112 Stat 107, to be codified at 23 U.S.C. 202(d)(4)(A), and in order to promptly address the deficient IRR bridges, project selection/fund allocation procedures will be developed. The FHWA is soliciting comments in writing and at a series of informal consultation sessions with Indian tribal governments and other interested parties to develop procedures for this program. Both written and oral comments will be considered and included in the docket. Following consultation and the review of written comments, the FHWA intends to develop through appropriate administrative processes project selection/fund allocation procedures by which to operate the IRRBP.

Statutory Provisions: Section 1115 of TEA–21, amended title 23, U.S.C., to require the Secretary to establish a nationwide priority program for improving deficient IRR bridges. Of the amounts authorized to be appropriated for IRRs for each fiscal year 1998 through 2003, section 1115 requires the Secretary, in cooperation with the Secretary of the Interior, to reserve not less than $13 million for projects to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate to, apply sodium acetate/formate or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions, or install scour countermeasures for deficient IRR bridges, including multiple-pipe culverts.

The statute provides that, to be eligible to receive funding under the Nationwide Priority Bridge Program, a bridge must: (i) have an opening of 20 feet or more; (ii) be on an IRR; (iii) be unsafe because of structural deficiencies, physical deterioration, or functional obsolescence; and (iv) be recorded in the national bridge inventory (NBI) administered by the Secretary under 23 U.S.C. 144 (b). The statute further provides that the funds to carry out IRR bridge projects shall be made available only on approval of

plans, specifications, and estimates (PS&E) by the Secretary.

The following information highlights the statutory provisions that define the IRRBP and presents various FHWA preliminary recommendations and alternative procedures for program administration and funds distribution for the consideration of parties wishing to participate in the consultation sessions or desiring to file written comments. We emphasize that the project eligibility criteria and alternative funding procedures set forth in this notice for IRRBP administration are presented only as suggestions to assist interested parties in formulating their own comments and recommendations. We encourage parties to submit and we commit to actively consider additional alternatives for the IRRBP administration, as well as variations on the alternative funding procedures identified in this notice.

Issues Concerning Funding Availability and Project Eligibility

1. What is the total funding available for the IRR bridge program?

The statute provides a total program funding of not less than $13 million for each FY 1998–2003.

2. When will these funds become available?

These funds become available on October 1 of each fiscal year for each fiscal year 1998–2003.

3. When does an eligible project receive funding?

The statue provides that these funds are provided after the Secretary of Transportation approves a completed PS&E.

4. How long will these funds be available?

The statue provides that the funds for each fiscal year are available for the year authorized plus three years (a total of four years).

5. What can these IRR bridge funds be used for?

The statute provides that these funds can be used to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate to, apply sodium acetate/formate or other environmentally acceptable, minimally corrosive anti-icing and deicing compositions, or install scour countermeasures for deficient IRR bridges.

6. Which bridges are eligible?

The statute provides that to be eligible to receive funding, a bridge must: (i) have an opening of 20 feet or more; (ii) be on an IRR; (iii) be unsafe because of structural deficiencies, physical deterioration or functional obsolescence; and (iv) be recorded in the NBI maintained by the FHWA. In view of the limited availability of funds, and under 23 U.S.C. 204(a)'s recognition of the need for all Federal roads to be treated under uniform policies that apply to Federal-aid highways, the FHWA invites comment on the advisability of including in IRRBP procedures a provision that, if a bridge has been rehabilitated or replaced in the last 10 years, its eligibility would be limited to seismic retrofit or installation of scour countermeasures.

7. When is a bridge eligible for replacement?

Given under 23 U.S.C. 204(a)'s recognition of the need for all Federal roads to be treated under uniform policies that apply to Federal-aid highways, the FHWA recommends preliminarily that IRRBP procedures should provide that, to be eligible for replacement, the bridge must be considered deficient for reasons of structural deficiency or functional obsolescence. We further recommend that any procedures developed for program administration should provide that the bridge also must have an NBI sufficiency rating of less than 50 to be eligible for replacement. We invite commenters specifically to address these issues.

8. When is a bridge eligible for rehabilitation?

For reasons corresponding to those addressed in item 7 concerning replacement eligibility, the FHWA invites comment on the advisability of including in the IRRBP procedures a provision that, to be eligible for rehabilitation, a bridge must be considered deficient for reasons of structural deficiency or functional obsolescence. We further recommend that program administration procedures should provide that a bridge also must have an NBI sufficiency rating of less than or equal to 80 to be eligible for rehabilitation. Finally, we invite comments on the advisability of stipulating in any IRRBP procedures that a bridge would be eligible for replacement if the total life cycle cost for bridge rehabilitation exceeds the costs to replace.

9. How does ownership impact project selection?

Since the Federal government has both a trust responsibility and owns the BIA bridges on Indian reservations, the FHWA recommends preliminarily and invites comment on the view that, under any IRRBP procedures developed, primary consideration would be given to funding construction projects for deficient BIA owned IRR bridges. We emphasize that consideration could also be given to the funding of construction projects for the deficient non-BIA, IRR bridges. States and counties have at their disposal other revenue sources to use to rehabilitate and replace non-BIA IRR bridges. Specifically States and counties have access to the highway bridge replacement and rehabilitation program (HBRRP) funds previously provided under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102–240, 105 Stat. 1914, and continued under the TEA–21 for rehabilitation and replacement of their deficient non-BIA owned IRR bridges.

10. Do IRRBP projects have to be on a transportation improvement program (TIP)?

Yes. All IRRBP projects have to be listed on an approved TIP. Under 23 U.S.C. 204 (j), IRR bridges must appear on the BIA's IRRBP TIP and be forwarded to the State.

11. What percent of the contract authority in any fiscal year is available for use on BIA owned bridges and non-BIA owned IRR bridges?

Based on the ownership issues previously discussed in item 9 emphasizing the need to reduce the number of deficient BIA owned IRR bridges, the FHWA invites comment on the advisability of including in the IRRBP procedures a provision that up to 80 percent ($10.4 million) of contract authority in any fiscal year would be available for use on BIA owned IRR bridges. This would leave 20 percent ($2.6 million) of contract authority in any fiscal year that would be available for use on non-BIA owned IRR bridges. Under this approach, by April 30 of each year, any excess funds beyond those required for non-BIA owned bridges would be made available for deficient BIA owned bridges.

12. What percent of a specific project's construction costs is covered under this program?

The FHWA invites comment on the advisability of including within any procedures adopted for administering the IRRBP the following funding provisions: (i) Up to 100 percent contract authority would be provided for a BIA owned IRR bridge; (ii) Up to 80 percent of the contract authority would be provided for a State, county,

or locally owned non-BIA IRR bridge; (iii) States, counties, local and tribal governments would be required to provide at least 20 percent of the funds for non-BIA IRR bridges; (iv) The contract authority ceiling for any single non-BIA IRR bridge project would be $1.5 million.

13. When are IRR bridge projects eligible for funding?

Section 1115 provides that IRR funds to carry out IRRBP projects shall be made available only on approval of PS&E by the Secretary. Approval consists of having completed and approved bridge design, specifications and estimates. The FHWA invites comment on including within any IRRBP procedures the following provisions concerning timing of project eligibility. The project must be ready for construction, right of way must have been acquired, and the project must be awarded within 120 calendar days of funding. A copy of the FHWA Division Office PS&E approval letter, control schedule and certification checklist must be forwarded by the area office to the BIADOT/FLHO for review and acceptance. Submittal of an incomplete application package would form the basis for project disapproval and the BIA area office would have to revise and resubmit the package.

14. What does a complete application package consist of?

The FHWA invites comment on the advisability of including within any IRRBP procedures the following provisions concerning contents of the application package. A complete application package would consist of the following: the FHWA Division Office PS&E approval letter, control schedule and certification checklist.

15. How are the FY 1998 projects to be treated?

The FHWA invites comment on the advisability of including within any IRRBP procedures the following provision concerning funding of FY 1998 projects. In order not to penalize any BIA area office which completed PS&E packages in FY 1998 that were not funded because the project selection/ fund allocation procedures for distribution of funds for FY 1998 were not in place, the funds for approved projects would be made available to the BIA area offices on receipt and acceptance of their application packages.

16. How is a list of deficient bridges to be generated?

The FHWA invites comment on the advisability of including within any IRRBP procedures the following methodology for generating a list of deficient IRR bridges. A list of deficient BIA IRR bridges would be developed each fiscal year by the FHWA based on the annual April update of the NBI. The NBI is based on data from the inspection of IRR bridges. Likewise, a list of non-BIA IRR bridges would be obtained from the NBI. These lists would form the basis for identifying bridges that would be considered potentially eligible for participation in the IRRBP. Two separate master bridge lists (one each for BIA and non-BIA IRR bridges) would be developed and would include, at a minimum, the following: (i) sufficiency rating; (ii) status (structurally deficient or functionally obsolete); (iii) average daily traffic (NBI item 29); (iv) detour length (NBI item 19); and (v) truck average daily traffic (NBI item 109). These lists would be provided by the FHWA to the BIADOT for publication and notification of affected BIA area offices, Indian tribal governments, and State and local governments.

The FHWA further recommends and invites comment on the view that, the Indian tribal governments in consultation with the BIA area offices prioritize the design for bridges that are structurally deficient over bridges that are simply functionally obsolete, since the former is more critical structurally than the latter. Bridges that have higher average daily traffic (ADT) should be considered before those that have lower ADT. Detour length should also be a factor in selection and submittal of bridges, with those having a higher detour length being of greater concern. Lastly, bridges with high truck ADT should take precedence over those which have lower ADT. Other items of note should be whether school buses use the bridge and the types of trucks that may cross the bridge and the loads imposed.

17. In the event of project cost over runs how would they be funded?

The FHWA invites comment on the advisability of including within any IRRBP procedures the following methodology for funding cost over runs. Because of the critical nature of this program, BIA area road engineer (ARE) approved costs in excess of the project estimate could be funded out of this program depending on the availability of funds and subject to BIADOT/ FLHO project approval procedures.

18. Could regular IRR funds be used to fund a bridge project?

The FHWA invites comment on the advisability of including within any IRRBP procedures the following provision concerning use of regular IRR funds to fund bridge projects. Indian tribal governments could use regular IRR construction funds to fund a bridge project with the concurrence of the FHWA, BIADOT and the ARE. (Note, IRR funds may not be used to match state HBRRP funds.)

19. Could bridge maintenance be performed with these funds?

No. Bridge maintenance (BM) type repairs would not be within the scope of funding, e.g. guard rail replacement, deck timber repair, delineators replacement etc. There are BM funds available through annual Department of Interior (DOI) appropriations for use on BIA owned bridges. These DOI BM funds would be the appropriate funding source for BM.

20. Once eligibility of a bridge project has been determined, how will the project be funded/programmed?

The FHWA has preliminarily identified alternative procedures for project funding of BIA owned and non-BIA owned IRR bridges and has set forth these procedures for consideration in this notice. Commenters are encouraged to review and assess these procedural alternatives and to develop any additional strategies for distributing funds for the rehabilitation or replacement of deficient IRR bridges. To assist in this consideration process, the alternatives presented here also are summarized and set forth for comparison purposes in the tabular form in the appendix.

Funding Procedures for BIA Owned IRR Bbridges

Alternative Procedure No. 1

Funding and/or programming of construction projects would be based on the annual calculation of bridge deck areas for deficient BIA owned IRR bridges. This is the same procedure the FHWA uses to distribute HBRRP program funds to the States. From this calculation, a percentage of the obligation limitation would be reserved for each BIA area office.

Alternative Procedure No. 2

Funding and/or programming of construction projects would be based on the annual calculation of bridge deck areas for deficient BIA owned IRR bridges. This is the same procedure the FHWA uses to distribute HBRRP

program funds to the States. From this calculation, a percentage of the obligation limitation would be reserved for each BIA area office for use in that specific State where the deficient bridges are identified. This would be similar to the way the not less than 1 percent HBRRP operated under the ISTEA.

Alternative Procedure No. 3

Funding and/or programming of construction projects would be based on the annual calculation of the number of deficient bridges for the BIA owned IRR bridges. From this calculation, a percentage of the bridge obligation limitation would be reserved for each BIA area office. This distribution is based on the percentage of deficient bridges within that BIA area office.

Alternative Procedure No. 4

Funding and/or programming of construction projects for BIA owned IRR bridges would be based on the order of receipt of a complete application package, i.e., eligibility requirements met, PS&E package is complete, etc. All application packages would be placed in a queue upon transmission to the BIADOT and date stamped. This submission queue would form the basis for prioritization during any fiscal year. After the queue for the FY is filled up, that is, the obligation limitation is used up, a queue for the following FY would be established.

Alternative Procedure No. 5

Funding and/or programming of construction projects for BIA owned IRR bridges would be based on the prioritization and ranking of deficient bridges. The complete application package would be submitted to the BIADOT and date stamped. Deadline for submission would be March 31 of any FY. Application packages would be ranked and prioritized based on: (i) bridge sufficiency rating; (ii) bridge status with structurally deficient having precedence over functionally obsolete; (iii) bridges on school bus routes; (iv) detour length; (v) ADT; and (vi) truck ADT. Funding and approval would be based on this priority ranking.

Funding Procedures for Non-BIA Owned IRR Bridges

Alternative Procedure No. 1

Funding and/or programming of construction projects would be based on the annual calculation of bridge deck areas for deficient non-BIA owned IRR bridges. This is the same procedure the FHWA uses to distribute HBRRP program funds to the States. From this calculation, a percentage of the obligation limitation would be reserved for each BIA area office.

Alternative Procedure No. 2

Funding and/or programming of construction projects for non-BIA owned IRR bridges would be based on the order of receipt of a complete application package, i.e., eligibility requirements met, PS&E package is complete, etc. All application packages would be placed in a queue upon transmission to the BIADOT and date stamped. This submission queue would form the basis for prioritization during any fiscal year. After the queue for the FY is filled up, that is, the obligation limitation is used up, a queue for the following FY would be established.

Alternative Procedure No. 3

Based on the reasoning presented in items 9 and 11, funding for non-BIA owned IRR bridges would be based on the prioritization and ranking of deficient bridges. Bridge project candidates would be submitted to the BIADOT and date stamped. Application packages would be ranked and prioritized based on: (i) bridge sufficiency rating; (ii) bridge status with structurally deficient having precedence over functionally obsolete; (iii) bridges on school bus routes; (iv) detour length; (v) ADT; and (vi) truck ADT. Funding and approval would be based on this priority ranking.

21. Under alternative procedures presented above, after a bridge project has been completed what happens with the excess or surplus contract authority?

The FHWA expressly invites comment on these general considerations for treatment of excess or surplus contract authority.

Under alternative procedures 1, 2, or 3 for funding BIA owned IRR bridges, once a bridge construction project has been completed under this program, any excess or surplus contract authority would be reserved for use on another approved deficient IRR bridge project within that BIA area.

Under alternative procedures 4 and 5 for funding BIA-owned IRR bridges and alternative procedures 1, 2 or 3 for non-BIA owned IRR bridges, once a bridge construction project has been completed under this program, any excess or surplus contract authority would be returned to FHWA/BIADOT for use on additional approved deficient IRR bridge projects.

(Authority: 23 U.S.C. 202(d) and 315; sec. 1115, Pub. L. 105–178, 112 Stat. 107, 154; 49 CFR 1.48)

Issued on: February 5, 1999.

Kenneth R. Wykle,

Federal Highway Administrator.

APPENDIX—ALTERNATIVES FOR THE IRR BRIDGE PROGRAM

[Deficient IRR Bridges]

Bridge funds to be allocated to the BIA Area Offices:	Alt No.	BIA	Alt No.	Non-BIA
Based on bridge deck area for deficient bridges.	1	Calculation made of the deficient bridges within any BIA Area Office along with percent of deficient bridge deck areas. That percent of the fund is then made available to each Area Office. Funds distributed to Areas and can be spent against bridge projects regardless of State.	1	Calculation made of the deficient bridges within any BIA Area Office along with percent of deficient bridge deck areas. That percent of the fund is then made available to each Area Office. Funds distributed to Areas and can be spent against bridge projects regardless of State. If no, non-BIA bridge projects are identified in any FY, those funds would be made available for BIA owned bridges.

APPENDIX—ALTERNATIVES FOR THE IRR BRIDGE PROGRAM—Continued

[Deficient IRR Bridges]

Bridge funds to be allocated to the BIA Area Offices:	Alt No.	BIA	Alt No.	Non-BIA
Based on bridge deck area for deficient bridges but State specific.	2	Calculation made of the deficient bridges within any BIA Area Office along with percent of deficient bridge deck areas. That percent of the fund is then made available to each Area Office. Funds distributed to Areas and can be spent only against bridge projects in the specific state on which the deficient bridge funds were generated (similar to the not less than 1 percent HBRRP).	.....	Intentionally left blank.
Based on number of deficient bridges.	3	Calculation made of the number of deficient bridges within a given BIA Area Office. Based on the number of deficient bridges, a percent of the fund is then made available to each Area Office. Funds distributed to Areas and can be spent against bridge projects regardless of State..	.....	Intentionally left blank.
Based on order of receipt of the PS&E package (first in first out).	4	Bridges are placed in a queue based on the order of receipt of a complete PS&E package. Funds are made available to the BIA Area Office based on the order of submission.	2	Bridges are placed in a queue based on the order of receipt of a complete PS&E package. Funds are made available to the BIA Area Office based on the order of submission. If no, non-BIA bridge projects are identified in any FY, those funds would be made available for BIA owned bridges.
Based on ranking of received PS&E Packages.	5	Bridges are prioritized and ranked based on SR, status, school bus route, detour length, ADT, and truck ADT. Funds are allocated to the BIA Area Office based on the ranking.	3	Submitted complete PS&E packages are ranked and prioritized by sufficiency rating, etc. Funds are made available to the Area Office based on the priority ranking. If no, non-BIA bridge projects are identified in any FY, those funds would be made available for BIA owned bridges.

[FR Doc. 99–3509 Filed 2–11–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–99–5091]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before April 13, 1999.

FOR FURTHER INFORMATION CONTACT: Crawford Ellerbe, Office of Maritime Labor, Training, and Safety, Maritime Administration, MAR–250, Room 7302, 400 Seventh Street, SW, Washington, D.C. 20590. Telephone 202–366–2643 or fax 202–493–2288. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Regulations for Making Excess or Surplus Federal Property Available to the U.S. Merchant Marine Academy, State Maritime Academies, and Approved Nonprofit Maritime Training Institutions.

Type of Request: Extension of a currently approved information collection.

OMB Control Number: 2133–0504.

Form Number: None.

Expiration Date of Approval: October 31, 1999.

Summary of Collection of Information: In accordance with 46 U.S.C. 12959, MARAD requires approved maritime training institutions seeking excess or surplus property to provide a statement of need/justification prior to acquiring the excess or surplus property.

Need and Use of the Information: This information collection is used by the requestor to provide a justification of the intended use of the property, and is needed by MARAD to determine compliance with applicable statutory requirements.

Description of Respondents: Maritime training institutions interested in acquiring the excess or surplus property from MARAD.

Annual Responses: 30 responses.

Annual Burden: 120 hours.

Comments: Signed written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, D.C. 20590. Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., ET. Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

By Order of the Maritime Administrator.

Dated: February 8, 1999.

Joel C. Richard,

Secretary.

[FR Doc. 99–3471 Filed 2–11–99; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33711]

Salt Lake City Southern Railroad Company, Inc.—Operation Exemption—Union Pacific Railroad Company

Salt Lake City Southern Railroad Company, Inc. (SLS), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to operate under an operating easement over a .26-mile rail line, owned by Union Pacific Railroad Company (UP), between milepost 798.74 and milepost 799.0 in Salt Lake City, UT.[1]

The transaction was scheduled to be consummated on or shortly after January 31, 1999.

If this notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33711, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Esq., Ball Janik LLP, 1455 F Street, NW, Suite 225, Washington, DC 20005.

Board decisions and notices are available on our website at WWW.STB.DOT.GOV.''

Decided: February 4, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–3209 Filed 2–11–99; 8:45 am]

BILLING CODE 4915–00–P

[1] SLS certifies that its annual revenues will not exceed those that would qualify it as a Class III rail carrier and that its revenues are not projected to exceed $5 million.

SLS currently has the right to operate over certain trackage in Salt Lake City which now is owned by the Utah Transit Authority (UTA). SLS will operate over the additional trackage which is the subject of this notice as part of the Gateway Redevelopment Project in Salt Lake City. UP plans ultimately to convey this .26-mile segment of trackage to UTA. This trackage is an extension of the Provo Subdivision which is now owned by UTA and which was formerly owned by UP.

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Firearms Transaction Record, Part 1, Over-the-Counter.

DATES: Written comments should be received on or before April 13, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Nick Colucci, Firearms Trafficking Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8919.

SUPPLEMENTARY INFORMATION:

Title: Firearms Transaction Record, Part 1, Over-the-Counter.

OMB Number: 1512–0129.

Form Number: ATF F 4473 (5300.9) Part 1.

Abstract: ATF F 4473 (5300.9) Part 1 is used to determine the eligibility (under the Gun Control Act) of a person to receive a firearm from a Federal firearms licensee. The form is also used in law enforcement investigations/ inspections to trace firearms and to establish the identity of the buyer. The record retention period for this information collection is 20 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 9,248,000.

Estimated Time Per Respondent: 19 minutes.

Estimated Total Annual Burden Hours: 2,821,568.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 8, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–3539 Filed 2–11–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Licensed Firearms Manufacturers Records of Production, Disposition, and Supporting Data.

DATES: Written comments should be received on or before April 13, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650

Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Nicholas Colucci, Firearms Trafficking Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8919.

SUPPLEMENTARY INFORMATION:

Title: Licensed Firearms Manufacturers Records of Production, Disposition, and Supporting Data.

OMB Number: 1512–0369.

Recordkeeping Requirement ID Number: ATF REC 5300/1.

Abstract: Firearms manufacturers records are permanent records of all firearms manufactured and records of their disposition. These records are vital to support ATF's mission to inquire into the disposition of any firearm in the course of a criminal investigation. Records must be maintained for a period of 3 years.

Current Actions: The only change to this information collection is an increase in the number of respondents which has resulted in an increase in burden hours.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,694.

Estimated Time Per Respondent: 3 minutes per line item.

Estimated Total Annual Burden Hours: 76,611.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 8, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–3540 Filed 2–11–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Report of Firearms Transactions.

DATES: Written comments should be received on or before April 17, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Nicholas Colucci, Firearms Trafficking Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8919.

SUPPLEMENTARY INFORMATION:

Title: Report of Firearms Transactions.

OMB Number: 1512–0178.

Form Number: ATF F 5300.5.

Abstract: ATF F 5300.5 documents transactions of firearms for law enforcement purposes. ATF uses the information to determine that the transaction is in accordance with laws and regulations and establishes the person(s) involved in the transactions.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 250.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 250.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 8, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–3541 Filed 2–11–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Claim—Alcohol, Tobacco and Fireams Taxes.

DATES: Written comments should be received on or before April 13, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Joan Kravchak, Revenue Operations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–6993.

SUPPLEMENTARY INFORMATION:

Title: Claim—Alcohol, Tobacco and Firearm Taxes.

OMB Number: 1512–0141.

Form Number: ATF F 2635 (5620.8).

Abstract: The form is used, along with other supporting documents, to obtain credit, remission, and allowance of tax on taxable articles (alcohol, beer, tobacco products, firearms, and ammunition) that have been lost and to obtain refund of overpaid taxes and abatement of overassessed taxes.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit, individuals or households, not-for-profit institutions.

Estimated Number of Respondents: 10,000.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 10,000.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 8, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–3542 Filed 2–11–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Report of Wine Premises Operations.

DATES: Written comments should be received on or before April 13, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marjorie D. Ruhf, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8202.

SUPPLEMENTARY INFORMATION:

Title: Report of Wine Premises Operations.

OMB Number: 1512–0216.

Form Number: ATF F 5120.17.

Abstract: ATF collects this information in order to monitor activities at bonded wine premises. Information on production, removals, and raw materials used is analyzed to ensure compliance with tax and consumer protection laws enforced by ATF. The record retention period for this information collection is 3 years.

Current Actions: The only change to this information collection is an increase in the number of respondents resulting in an increase in burden hours.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,755.

Estimated Time Per Respondent: 1 hour and 6 minutes.

Estimated Total Annual Burden Hours: 10,642.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 8, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–3543 Filed 2–11–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Records of Acquisition and Disposition—Registered Importers of Arms, Ammunition, and Implements of War on the U.S. Munitions Imports List.

DATES: Written comments should be received on or before April 13, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Debbie Lee, Firearms and Explosives Imports Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8320.

SUPPLEMENTARY INFORMATION:

Title: Records of Acquisition and Disposition—Registered Importers of Arms, Ammunition, and Implements of War on the U.S. Munitions Imports List.

OMB Number: 1512–0386.

Recordkeeping Requirement ID Number: ATF REC 7550/1.

Abstract: These records are unique in that they are of imported items that are on the U.S. Munitions Import List. The importers must register with ATF and must file an intent to import specific items, as well as certify to the Bureau that the items were in fact received. The records are maintained at the registrant's business premises where they are avaliable for inspection by officers of ATF during compliance inspections or criminal investigations. Records must be maintained for a period of 6 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 50.

Estimated Time Per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 250.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 8, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–3544 Filed 2–11–99; 8:45 am]

BILLING CODE 4810–31–P

UNITED STATES INSTITUTE OF PEACE

Announcement of the Spring Unsolicited Grant Competition Grant Program

AGENCY: United States Institute of Peace.

ACTION: Notice.

SUMMARY: The Agency Announces its Upcoming Spring Unsolicited Grant Deadline, which offers support for research, education and training, and the dissemination of information on international peace and conflict resolution.

Deadline: March 1, 9999.

DATES: Application Material Available Upon Request. Receipt Date for Return of Application: March 1, 1999. Notification of Awards: June 1999.

ADDRESSES: For Application Package: United States Institute of Peace, Grant Program • Unsolicited Grants, 1200 17th Street, NW • Suite 200, Washington, DC 20036–3011, (202) 429–3842 (phone), (202) 429–6063 (fax), (202) 457–1719 (TTY), Email: garnt__program@usip.org.

Applications also available on-line at our web site: www.usip.org.

FOR FURTHER INFORMATION CONTACT: The Grant Program, Phone (202) 429–3842.

Dated: February 3, 1999.

Bernice J. Carney,

Director, Office of Administration.

[FR Doc. 99–3457 Filed 2–11–99; 8:45 am]

BILLING CODE 6820–AR–M

federal register

Friday
February 12, 1999

Part II

Department of Housing and Urban Development

Federal Property Suitable as Facilities To Assist the Homeless; Notices

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–06]

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.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD reviewed in 1998 for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

In accordance with 24 CFR part 581.3(b) landholding agencies are required to notify HUD by December 31, 1998, the current availability status and classification of each property controlled by the Agencies that were published by HUD as suitable and available which remain available for application for use by the homeless.

Pursuant to 24 CFR part 581.8(d) and (e) HUD is required to publish a list of those properties reported by the Agencies and a list of suitable/unavailable properties including the reasons why they are not available.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: Jeff Holste, CECPW–FP, U.S. Army Center for Public Works, 7701 Telegraph Road, Alexandria, VA 22315; (703) 428–6318; Corps of Engineers: Shirley Middleswarth, Army Corps of Engineers, Management and Disposal Division, room 4224, 20 Massachusetts Ave., NW., Washington, DC 20314–1000; (202) 761–0515; U.S. Navy: Charles C. Cocks, Dept. of Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200; U.S. Air Force: Barbara Jenkins, Air Force Real Estate Agency (Area/MI), Bolling AFB, 112 Luke Avenue, Suite 104, Washington, DC 20332–8020; (202) 767–4184; GSA: Brian K. Polly, Office of Property Disposal, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501–2059; Dept. of Veterans Affairs: George L. Szwarcman, Land Management Service, Dept. of Veterans Affairs, room 414, Lafayette Bldg., 811 Vermont Ave., NW., Washington, DC 20420; (202) 565–5941; Dept. of Energy: Marsha Penhaker, Facilities Planning and Acquisition Branch, FM–20, Room 6H–058, Washington, DC 20585; (202) 586–0426; Dept. of Transportation: Rugene Spruill, Space Management, Transportation Administrative Service Center, DOT, 400 Seventh St., SW., room 2310, Washington, DC 20590; (202) 366–4246; Dept. of Interior: Lola D. Kane, Property Management, Dept. of Interior, 1849 C St., NW., Mailstop 5512–MIB, Washington, DC 20240; (202) 208–4080; (These are not toll-free numbers).

Dated: February 4, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

TITLE V PROPERTIES REPORTED IN YEAR 1998 WHICH ARE SUITABLE AND AVAILABLE

Air Force

California

Building

Bldg. 604
Property #: 18199010237
Fed Reg Date: 08/21/1998
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 605
Property #: 18199010238
Fed Reg Date: 08/21/1998
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 612
Property #: 18199010239
Fed Reg Date: 08/21/1998
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 611
Property #: 18199010240
Fed Reg Date: 08/21/1998
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 613
Property #: 18199010241
Fed Reg Date: 08/21/1998
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 614
Property #: 18199010242
Fed Reg Date: 08/21/1998
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 615
Property #: 18199010243
Fed Reg Date: 08/21/1998
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 616
Property #: 18199010244
Fed Reg Date: 08/21/1998
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Status: Unutilized

Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 617
Property #: 18199010245
Fed Reg Date: 08/21/1998
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 618
Property #: 18199010246
Fed Reg Date: 08/21/1998
Point Arena Air Force Station
Co: Mendorino CA 95468–5000
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing; needs rehab.

Idaho

Building

Bldg. 516
Property #: 18199520004
Fed Reg Date: 08/21/1998
Mountain Home Air Force Base
Mountain Home Co: Elmore ID 86348–
Status: Excess
Commnet: 4928 sq. ft., 1 story wood frame, presence of lead paint and asbestos, most recent use—offices.

Bldg. 2201
Property #: 18199520005
Fed Reg Date: 08/21/1998
Mountain Home Air Force Base
Mountain Home Co: Elmore ID 86348–
Status: Underutilized
Comment: 6804 sq. ft., 1 story wood frame, most recent use—temporary garage for base fire dept. vehicles, presence of lead paint and asbestos shingles.

Maine

Land

Irish Ridge NEXRAD Site
Property #: 18199010017
Fed Reg Date: 08/21/1998
Loring AFB
Fort Fairfield Co: Arostocok ME 04742–
Status: Unutilized
Comment: 3.491 acres in fee simple.

Massachusetts

Land

.07 acre
Property #: 18199840007
Fed Reg Date: 01/22/1998
Westover Air Reserve Base
Off Rte 33
Chicopee Co: Hampden MA 01022–
Status: Excess
Comment: land, no utilities.

Montana

Building

Bldg. 112
Property #: 18199610002
Fed Reg Date: 08/21/1998
Forsyth Training Site
Co: Rosebud MT
Status: Unutilized
Comment: 586 sq. ft., most recent use—cold storage.

Nebraska

Building

Bldg. 20
Property : 18199610004
Fed Reg Date: 08/21/1998
Offutt Communications Annex 4
Silver Creek Co: Nance NE 68663–
Status: Unutilized
Comment: 4714 sq. ft., most recent use—dormitory needs major repair.

Land

Hastings Radar Bomb Scoring
Property #: 18199810027
Fed Reg Date: 08/21/1998
Hastings Co: Adams NE 68901–
Status: Unutilized
Comment: 11 acres.

New Mexico

Building

Bldg. 23301, 23329, 23333
Property #: 18199820025
Fed Reg Date: 08/21/1998
Kirtland AFB
Kirtland Co: Bernalillo NM 87117–5000
Status: Unutilized
Comment: approx. 1813 sq. ft., presence of lead, most recent use—residential, off-site use only.

South Dakota

Building

West Communications Annex
Property #: 18199340051
Fed Reg Date: 08/21/1998
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Status: Unutilized
Comment: 2 bldgs. on 2.37 acres, remote area, lacks infrastructure, road hazardous during winter storms, most recent use—industrial storage.

Washington

Land

Spokane Satellite Tracking
Property #: 18199810028
Fed Reg Date: 08/21/1998
Fairchild AFB
Portion of Site
Spokane WA 99224–
Status: Unutilized
Comment: 1.14 acres w/water well pump house.

Army

Alabama

Building

Bldg. 60101
Property #: 21199520152
Fed Reg Date: 12/25/1998
Shell Army Heliport
Ft. Rucker Co: Dale AL 36362–5000
Status: Unutilized
Comment: 6082 sq. ft., 1-story, most reent use—airfield fire station, off-site use only.

Bldg. 60103
Property #: 21199520154
Fed Reg Date: 12/25/1998
Shell Army Heliport
Ft. Rucker Co: Dale AL 36362–5000
Status: Unutilized
Comment: 12516 sq. ft., 2-story, most recent use—admin., off-site use only.

Bldg. 60110
Property #: 21199520155
Fed Reg Date: 12/25/1998
Shell Army Heliport
Ft. Rucker Co: Dale AL 36362–5000
Status: Unutilized
Comment: 8319 sq. ft., 1-story, most recent use—admin., off-site use only.

Bldg. 60113
Property #: 21199520156
Fed Reg Date: 12/25/1998
Shell Army Heliport
Ft. Rucker Co: Dale AL 36362–5000
Status: Unutilized
Comment: 4000 sq. ft., 1-story, most reent use—admin., off-site use only.

Bldgs. 2802, 2805
Property #: 21199620662
Fed Reg Date: 12/25/1998
Fort Rucker
Ft. Rucker Co: Dale AL 36362–
Status: Unutilized
Comment: #2802=13,082 sq. ft., #2805=13,082 sq. ft., most recent use—admin., needs repair, off-site use only.

Bldg. 172
Property #: 21199840125
Fed Reg Date: 11/20/1998
Anniston Army Depot
Anniston AL 36201–
Status: Unutilized
Comment: 5895 sq. ft., needs rehab, most recent use—demolition shop, off-site use only.

Bldg. 88
Property #: 21199840126
Fed Reg Date: 11/20/1998
Anniston Army Depot
Anniston AL 36201–
Status: Unutilized
Comment: 5360 sq. ft., needs rehab, most recent use—renovation shop, off-site use only.

Alaska

Building

Bldgs. 420, 422, 426, 430
Property #: 21199740276
Fed Reg Date: 12/25/1998
Fort Richardson
Anchorage AK 99505–6500
Status: Excess
Comment: 13,056 sq. ft., presence of asbestos/lead paint, most recent use—family housing, off-site use only.

Bldg. 220
Property #: 21199810244
Fed Reg Date: 12/25/1998
Fort Richardson
Ft. Richardson AK 99505–6500
Status: Excess
Comment: 13,056 sq. ft., presence of abestos/lead paint, most recent use—housing, off-site use only.

Bldg. 226
Property #: 21199810245
Fed Reg Date: 12/25/1998
Fort Richardson
Ft. Richardson, AK 99505–6500
Status: Excess
Comment: 13,056 sq. ft., presence of asbestos/lead paint, most recent use—housing, off-site use only.

Bldg. 283

Property #: 21199810250
Fed Reg Date: 12/25/1998
Fort Richardson
Ft. Richardson, AK 99505–6500
Status: Excess
Comment: 13,056 sq. ft., presence of asbestos/lead paint, most recent use—housing, off-site use only.

Arizona

Building

Bldg. 30012, Fort Huachuca
Property #: 21199310298
Fed Reg Date: 12/25/1998
Sierra Vista Co: Cochise AZ 85635–
Status: Excess
Comment: 237 sq. ft., 1-story block, most recent use—storage.

Bldg. S–306
Property #: 21199420346
Fed Reg Date: 12/25/1998
Yuma Proving Ground
Yuma Co: Yuma/La Paz AZ 85365–9104
Status: Unutilized
Comment: 4103 sq. ft., 2-story, needs major rehab, scheduled to be vacated on or about 2/95.

Bldg. 503, Yuma Proving Ground
Property #: 21199520073
Fed Reg Date: 12/25/1998
Yuma Co: Yuma AZ 85365–9104
Status: Underutilized
Comment: 3789 sq. ft., 2-story, major structural changes required to meet floor loading & fire code requirements, presence of asbestos.

13 Bldgs.
Property #: 21199840127
Fed Reg Date: 11/20/1998
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Location: 15545, 22412, 22531, 30120, 30123, 70916, 71915, 71917, 71918, 71920, 72914, 72915, 72917
Status: Excess
Comment: various sq. ft., presence of asbestos/lead paint, most recent use—storage/office/training, off-site use only.

8 Bldgs.
Property #: 21199840129
Fed Reg Date: 11/20/1998
Fort Huachuca
Sierra Vista Co: Cochise ZA 85635–
Location: 46708, 46709, 46710, 44101, 44102, 44124, 44125, 44210
Status: Excess
Comment: various sq. ft. & bdrm units, presence of asbestos/lead paint, most recent use—family housing, off-site use only.

California

Building

Bldg. 4282
Property #: 21199810378
Fed Reg Date: 12/25/1998
Presidio of Monterey Annex
Seaside Co: Monterey CA 93944–
Status: Unutilized
Comment: 2283 sq. ft., presence of asbestos/lead paint, most recent use—office.

Bldg. 4461
Property #: 21199810379
Fed Reg Date: 12/25/1998
Presidio of Monterey Annex
Seaside Co: Monterey CA 93944–
Status: Unutilized
Comment: 992 sq. ft., presence fo asbestos/lead paint, most recent use—storage.

Colorado

Building

Bldg. P–1008
Property #: 21199630127
Fed Reg Date: 12/25/1998
Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Status: Unutilized
Comment: 3362 sq. ft., fair condition, possible asbestos/lead based paint, most recent use—service outlet, off-site use only.

Bldg. P–1007
Property #: 21199730210
Fed Reg Date: 12/25/1998
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Status: Unutilized
Comment: 3818 sq. ft., needs repair, possible asbestos/lead paint, most recent use—health clinic, off-site use only.

Bldg. T–1342
Property #: 21199730211
Fed Reg Date: 12/25/1998
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Status: Unutilized
Comment: 13,364 sq. ft., possible asbestos/lead paint, most recent use—instruction bldg.

Bldg. T–6005
Property #: 21199730213
Fed Reg Date: 12/25/1998
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Status: Unutilized
Comment: 19,015 sq. ft., possible asbestos/lead paint, most recent use—warehouse.

Georgia

Building

Bldg. 5390
Property #: 21199010137
Fed Reg Date: 12/25/1998
Fort Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 2432 sq. ft.; most recent use—dining room; needs rehab.

Bldg. 5362
Property #: 21199010147
Fed Reg Date: 12/25/1998
Fort Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 5559 sq. ft.; most recent use—service club; needs rehab.

Bldg. 5392
Property #: 21199010151
Fed Reg Date: 12/25/1998
Fort Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 2432 sq. ft.; most recent use—dining room; needs rehab.

Bldg. 5391
Property #: 21199010152
Fed Reg Date: 12/25/1998
Fort Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 2432 sq. ft.; most recent use—dining room needs rehab.

Bldg. 4487
Property #: 21199011681
Fed Reg Date: 12/25/1998
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 1868 sq. ft.; most recent use—telephone exchange bldg.; needs substantial rehabilitation; 1 floor.

Bldg. 3400
Property #: 21199011694
Fed Reg Date: 12/25/1998
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 2570 sq. ft.; most recent use—fire station; needs substantial rehabilitation; 1 floor.

Bldg. 2285
Property #: 21199011704
Fed Reg Date: 12/25/1998
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 4574 sq. ft.; most recent use—clinic; needs substantial rehabilitation; 1 floor.

Bldg. 4092
Property #: 21199011709
Fed Reg Date: 12/25/1998
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 336 sq. ft.; most recent use—inflamable materials storage; needs substantial rehabilitation; 1 floor.

Bldg. 4089
Property #: 21199011710
Fed Reg Date: 12/25/1998
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 176 sq. ft.; most recent use—gas station; needs substantial rehabilitation; 1 floor.

Bldg. 1235
Property #: 21199014887
Fed Reg Date: 12/25/1998
Fort Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 9367 sq. ft.; 1 story building; needs rehab; most recent use—General Storehouse.

Bldg. 1236
Property #: 21199014888
Fed Reg Date: 12/25/1998
Fort Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 9367 sq. ft.; 1 story building; needs rehab; most recent use—General Storehouse.

Bldg. 4491
Property #: 21199014916
Fed Reg Date: 12/25/1998
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 18240 sq. ft.; 1 story builidng; needs reharb; most recent use—vehicle maintenance shop.

Bldg. 2150
Property #: 21199120258
Fed Reg Date: 12/25/1998
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized

Comment: 3909 sq. ft., 1 story, needs rehab, most recent use—general inst. bldg.

Bldg. 3828
Property #: 21199120266
Fed Reg Date: 12/25/1998
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 628 sq. ft., 1 story, needs rehab, most recent use—general storehouse.

Bldg. 3086, Fort Benning
Property #: 21199220688
Fed Reg Date: 12/25/1998
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2 story, most recent use—barracks needs major rehab, off-site removal only.

Bldg. 3089, Fort Benning
Property #: 21199220689
Fed Reg Date: 12/25/1998
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2 story, most recent use—barracks needs major rehab, off-site removal only.

Bldg. 1252, Fort Benning
Property #: 21199220694
Fed Reg Date: 12/25/1998
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 583 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 3083, Fort Benning
Property #: 21199220699
Fed Reg Date: 12/25/1998
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 1372 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 3856, Fort Benning
Property #: 21199220703
Fed Reg Date: 12/25/1998
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 4111 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 4881, Fort Benning
Property #: 21199220707
Fed Reg Date: 12/25/1998
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 2449 sq. ft., 1 story, most recent use—storehouse, need repairs, off-site removal only.

Bldg. 4963, Fort Benning
Property #: 21199220710
Fed Reg Date: 12/25/1998
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storehouse, need repairs, off-site removal only.

Bldg. 2396, Fort Benning
Property #: 21199220712
Fed Reg Date: 12/25/1998
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 9786 sq. ft., 1 story, most recent use—dining facility, needs major rehab, off-site removal only.

Bldg. 3085, Fort Benning
Property #: 21199220715
Fed Reg Date: 12/25/1998
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 2253 sq. ft., 1 story, most recent use—dining facility, needs major rehab, off-site removal only.

Bldg. 4882, Fort Benning
Property #: 21199220727
Fed Reg Date: 12/25/1998
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storage, need repairs, off-site removal only.

Bldg. 4967, Fort Benning
Property #: 21199220728
Fed Reg Date: 12/25/1998
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storage, need repairs, off-site removal only.

Bldg. 5396, Fort Benning
Property #: 21199220734
Fed Reg Date: 12/25/1998
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 10944 sq. ft., 1 story, most recent use—general instruction bldg., needs major rehab, off-site removal only.

Bldg. 4977, Fort Benning
Property #: 21199220736
Fed Reg Date: 12/25/1998
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 192 sq. ft., 1 story, most recent use—offices, need repairs, off-site removal only.

Bldg. 4944, Fort Benning
Property #: 21199220747
Fed Reg Date: 12/25/1998
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 6400 sq. ft., 1 story, most recent use—vehicle maintenance shop, need repairs, off-site removal only.

Bldg. 4960, Fort Benning
Property #: 21199220752
Fed Reg Date: 12/25/1998
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 3335 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only.

Bldg. 4969, Fort Benning
Property #: 21199220753
Fed Reg Date: 12/25/1998
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 8416 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only.

Bldg. 1758, Fort Benning
Property #: 21199220755
Fed Reg Date: 12/25/1998
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 7817 sq. ft., 1 story, most recent use—warehouse, needs major rehab, off-site removal only.

Bldg. 3817, Fort Benning
Property #: 21199220758
Fed Reg Date: 12/25/1998
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 4000 sq. ft., 1 story, most recent use—warehouse, needs major rehab, off-site removal only.

Bldg. 4884, Fort Benning
Property #: 21199220762
Fed Reg Date: 12/25/1998
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only.

Bldg. 4964, Fort Benning
Property #: 21199220763
Fed Reg Date: 12/25/1998
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only.

Bldg. 4966, Fort Benning
Property #: 21199220764
Fed Reg Date: 12/25/1998
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only.

Bldg. 4883, Fort Benning
Property #: 21199220768
Fed Reg Date: 12/25/1998
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 2600 sq. ft., 1 story, most recent use—supply bldg., need repairs, off-site removal only.

Bldg. 4965, Fort Benning
Property #: 21199220769
Fed Reg Date: 12/25/1998
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 7713 sq. ft., 1 story, most recent use—supply bldg., need repairs, off-site removal only.

Bldg. 2589, Fort Benning
Property #: 21199220772
Fed Reg Date: 12/25/1998
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 146 sq. ft., 1 story, most recent use—training bldg., needs major rehab, off-site removal only.

Bldg. 4945, Fort Benning
Property #: 21199220779
Fed Reg Date; 12/25/1998
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 220 sq. ft., 1 story, most recent use—gas station, needs major rehab, off-site removal only.

Bldg. 4979, Fort Benning
Property #: 21199220780
Fed Reg Date: 12/25/1998
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 400 sq. ft., 1 story most recent use—oil house, need reparis, off-site removal only.

Bldg. 4004, Fort Benning
Property #: 21199310418
Fed Reg Date: 12/25/1998
Ft. Benning Co: Muscogee GA 31905–

Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 3072, Fort Benning
Property #: 21199310447
Fed Reg Date: 12/25/1998
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 479 sq. ft., 1-story needs rehab, most recent use—hdqtrs. bldg., off-site use only.

Bldg. 4019, Fort Benning
Property #: 21199310451
Fed Reg Date: 12/25/1998
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 3270 sq. ft., 2-story, needs rehab, most recent use—hdqtrs bldg., off-site use only.

Bldg. 4023, Fort Benning
Property #: 21199310461
Fed Reg Date: 12/25/1998
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 2269 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only.

Bldg. 4024, Fort Benning
Property #: 21199310462
Fed Reg Date: 12/25/1998
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 3281 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only.

Bldg. 4067, Fort Benning
Property #: 21199310465
Fed Reg Date: 12/25/1998
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 4406 sq. ft., 1-story, needs rehab, most recent use—admin. off-site use only.

Bldg. 354, Fort Gordon
Property #: 21199330259
Fed Reg Date: 12/25/1998
Ft. Gordon Co: Richmond GA 30905–
Status: Unutilized
Comment: 4237 sq. ft., 1-story wood, possible termite damage, needs repair, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 355, Fort Gordon
Property #: 21199330260
Fed Reg Date: 12/25/1998
Ft. Gordon Co: Richmond GA 30905–
Status: Unutilized
Comment: 4237 sq. ft., 1-story wood, needs repair, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 356, Fort Gordon
Property #: 21199330261
Fed Reg Date: 12/25/1998
Ft. Gordon Co: Richmond GA 30905–
Status: Unutilized
Comment: 4237 sq. ft., 1-story wood, possible termite damage, needs repair, most recent use—offices, off-site use only.

Bldg. 332, Fort Gordon
Property #: 21199330289
Fed Reg Date: 12/25/1998
Ft. Gordon Co: Richmond GA 30905–
Status: Unutilized
Comment: 5340 sq. ft., 1-story wood, needs repair, presence of asbestos, most recent use—laboratory, off-site use only.

Bldg. 333, Fort Gordon
Property #: 21199330290
Fed Reg Date: 12/25/1998
Ft. Gordon Co: Richmond GA 30905–
Status: Unutilized
Comment: 5340 sq. ft., 1-story wood, possible termite damage, needs repair, presence of asbestos, most recent use—laboratory, off-site use only.

Bldg. 10501
Fort Gordon
Property #: 21199410264
Fed Reg Date: 12/25/1998
Ft. Gordon Co: Richmond GA 30905–
Status: Unutilized
Comment: 2516 sq. ft.; 1 story; wood; needs rehab.; most recent use—offices; off-site use only.

Bldg. 11813
Fort Gordon
Property #: 21199410269
Fed Reg Date: 12/25/1998
Ft. Gordon Co: Richmond GA 30905–
Status: Unutilized
Comment: 70 sq. ft.; 1 story; metal; needs rehab.; most recent use—storage; off-site use only.

Bldg. 21314
Fort Gordon
Property #: 21199410270
Fed Reg Date: 12/25/1998
Ft. Gordon Co: Richmond GA 30905–
Status: Unutilized
Comment: 85 sq. ft.; 1-story; needs rehab.; most recent use—storage; off-site use only.

Bldg. 12809
Fort Gordon
Property #: 21199410272
Fed Reg Date: 12/25/1998
Ft. Gordon Co: Richmond GA 30905–
Status: Unutilized
Comment: 2788 sq. ft.; 1-story; wood; needs rehab.; most recent use—maintenance shop; off-site use only.

Bldg. 10306
Fort Gordon
Property #: 21199410273
Fed Reg Date: 12/25/1998
Ft. Gordon Co: Richmond GA 30905–
Status: Unutilized
Comment: 195 sq. ft.; 1-story; wood; most recent use—oil storage shed; off-site use only.

Bldg. 2814, Fort Benning
Property #: 21199520133
Fed Reg Date: 12/25/1998
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 40536 sq. ft., 4-story, most recent use—barracks w/dining, needs major repair, off-site use only.

Bldg. 4051, Fort Benning
Property #: 21199520175
Fed Reg Date: 12/25/1998
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 967 sq. ft., 1-story, needs rehab, most recent use—off-site use only.

Bldg. 2141
Property #: 21199610655
Fed Reg Date: 12/25/1998
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Status: Unutilized
Comment: 2283 sq. ft., needs repair, most recent use—office, off-site use only.

Bldg. T–293
Property #: 21199710230
Fed Reg Date: 12/25/1998
Fort Stewart
Hinesville Co: Liberty GA 31314–
Status: Excess
Comment: 5220 sq. ft., most recent use—admin., needs major repairs, off-site use only.

Bldg. 239
Property #: 21199720155
Fed Reg Date: 12/25/1998
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 2817 sq. ft., needs rehab, most recent use—exchange service outlet, off-site use only.

Bldg. 322
Property #: 21199720156
Fed Reg Date: 12/25/1998
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 9600 sq. ft., needs rehab, most recent use—admin., off-site use only.

Bldg. 1737
Property #: 21199720161
Fed Reg Date: 12/25/1998
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 1500 sq. ft., needs rehab, most recent use—storage, off-site use only.

Bldg. 2592
Property #: 21199720166
Fed Reg Date: 12/25/1998
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 11674 sq. ft., needs rehab, most recent use—gym, off-site use only.

Bldg. 2593
Property #: 21199720167
Fed Reg Date: 12/25/1998
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 13644 sq. ft., needs rehab, most recent use—parachute shop, off-site use only.

Bldg. 2595
Property #: 21199720168
Fed Reg Date: 12/25/1998
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 3356 sq. ft., needs rehab, most recent use—chapel, off-site use only.

Bldgs. 2865, 2869, 2872
Property #: 21199720169
Fed Reg Date: 12/25/1998
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: approx. 1100 sq. ft. each, needs rehab, most recent use—shower fac., off-site use only.

Bldg. 4476

Property #: 21199720184
Fed Reg Date: 12/25/1998
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 3148 sq. ft., needs rehab, most recent use—vehicle maint. shop, off-site use only.

8 Bldgs.
Property #: 21199720189
Fed Reg Date: 12/25/1998
Fort Benning
4700–4701, 4704–4707, 4710–4711
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 6433 sq. ft. each, needs rehab, most recent use—unaccompanied personnel housing, off-site use only.

Bldg. 4714
Property #: 21199720191
Fed Reg Date: 12/25/1998
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 1983 sq. ft., needs rehab, most recent use—battalion headquarters bldg., off-site use only.

Bldg. 4702
Property #: 21199720192
Fed Reg Date: 12/25/1998
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 3690 sq. ft., needs rehab, most recent use—dining facility off-site use only.

Bldgs. 4712–4713
Property #: 21199720193
Fed Reg Date: 12/25/1998
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 1983 sq. ft. and 10270 sq. ft., needs rehab, most recent use—company headquarters bldg., off-site use only.

Bldg. T–930
Property #: 21199730218
Fed Reg Date: 12/25/1998
Fort Stewart
Hinesville Co: Liberty GA 31314–
Status: Unutilized
Comment: 34098 sq. ft., poor condition, most recent use—laundry, off-site use only.

Bldg. T–931
Property #: 21199730219
Fed Reg Date: 12/25/1998
Fort Stewart
Hinesville Co: Liberty GA 31314–
Status: Unutilized
Comment: 2232 sq. ft., poor condition, most recent use—gas gen. plant, off-site use only.

Bldg. T–949
Property #: 21199730220
Fed Reg Date: 12/25/1998
Fort Stewart
Hinesville Co: Liberty GA 31314–
Status: Unutilized
Comment: 240 sq. ft. poor condition, most recent use—plant bldg., off-site use only.

Bldg. T–286
Property #: 21199810261
Fed Reg Date: 12/25/1998
Fort Stewart
Hinesville Co: Liberty GA 31314–
Status: Excess
Comment: 5310 sq. ft., poor condition, most recent use—admin., off-site use only.

Bldg. P–9597
Property #: 21199810263
Fed Reg Date: 12/25/1998
Fort Stewart
Hinesville Co: Liberty GA 31314–
Status: Excess
Comment: 324 sq. ft., poor condition, most recent use—storage, off-site use only.

Bldg. 123
Property #: 21199810265
Fed Reg Date: 12/25/1998
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 3590 sq. ft., most recent use—admin., off-site use only.

Bldg. 124
Property #: 21199810266
Fed Reg Date: 12/25/1998
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 227 sq. ft., most recent use—access control, off-site use only.

Bldg. 214
Property #: 21199810267
Fed Reg Date: 12/25/1998
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 26,268 sq. ft., most recent use—confinement facility, off-site use only.

Bldg. 305
Property #: 21199810268
Fed Reg Date: 12/25/1998
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 4083 sq. ft., most recent use—recreation center, off-site use only.

Bldg. 318
Property #: 21199810269
Fed Reg Date: 12/25/1998
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 374 sq. ft., poor condition, most recent use—maint. shop, off-site use only.

Bldg. 1792
Property #: 21199810274
Fed Reg Date: 12/25/1998
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 10,200 sq. ft., most recent use—storage, off-site use only.

Bldg. 1796
Property #: 21199810275
Fed Reg Date: 12/25/1998
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 5071 sq. ft., most recent use—recreation, off-site use only.

Bldg. 1836
Property #: 21199810276
Fed Reg Date: 12/25/1998
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 2998 sq. ft., most recent use—admin., off-site use only.

Bldg. 4373
Property #: 21199810286
Fed Reg Date: 12/25/1998
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 409 sq. ft., poor condition, most recent use—station bldg., off-site use only.

Bldg. 4628
Property #: 21199810287
Fed Reg Date: 12/25/1998
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 5483 sq. ft., most recent use—admin., off-site use only.

Bldg. T–801
Property #: 21199820145
Fed Reg Date: 12/25/1998
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Status: Unutilized
Comment: 4660 sq. ft., needs major rehab, most recent use—armory, off-site use only.

Bldg. T–807
Property #: 21199820146
Fed Reg Date: 12/25/1998
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Status: Unutilized
Comment: 4660 sq. ft., needs major rehab, most recent use—hdqts. bldg., off-site use only.

Bldg. T–809
Property #: 21199820147
Fed Reg Date: 12/25/1998
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Status: Unutilized
Comment: 6461 sq. ft., needs major rehab, most recent use—hdqts. bldg., off-site use only.

Bldg. 92
Property #: 21199830278
Fed Reg Date: 12/25/1998
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 637 sq. ft., needs rehab, most recent use—admin., off-site use only.

Bldg. 2445
Property #: 21199830279
Fed Reg Date: 12/25/1998
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Unutilized
Comment: 2385 sq. ft., needs rehab, most recent use—fire station, off-site use only.

Bldgs. 333, 1702, 2588
Property #: 21199830282
Fed Reg Date: 12/25/1998
Fort Benning
Co: Muscogee GA 31905–
Status: Unutilized
Comment: various sq. ft., needs rehab, most recent use—storage, off-site use only.

Bldg. 1731
Property #: 21199830285
Fed Reg Date: 12/25/1998
Fort Benning
Co: Muscogee GA 31905–
Status: Unutilized

Comment: 1992 sq. ft., needs rehab, most recent use—repair shop, off-site use only.

Bldg. 2282
Property #: 21199830288
Fed Reg Date: 12/25/1998
Fort Benning
Co: Muscogee GA 31905–
Status: Unutilized
Comment: 3000 sq. ft., needs rehab, most recent use—operations, off-site use only.

Bldgs. 1743, 1744
Property #: 21199830290
Fed Reg Date: 12/25/1998
Fort Benning
Co: Muscogee GA 31905–
Status: Unutilized
Comment: 7473 sq. ft., needs rehab, most recent use—storage, off-site use only.

Bldg. 4232
Property #: 21199830291
Fed Reg Date: 12/25/1998
Fort Benning
Co: Muscogee GA 31905–
Status: Unutilized
Comment: 3720 sq. ft., needs rehab, most recent use—maint. bay, off-site use only.

Bldg. 2403
Property #: 21199830292
Fed Reg Date: 12/25/1998
Fort Benning
Co: Muscogee GA 31905–
Status: Unutilized
Comment: 44,352 sq. ft., needs rehab, most recent use—maint. hangar, off-site use only.

Bldg. 3763
Property #: 21199830294
Fed Reg Date: 12/25/1998
Fort Benning
Co: Muscogee GA 31905–
Status: Unutilized
Comment: 1841 sq. ft., needs rehab, most recent use—exch. auto svc., off-site use only.

Bldg. 5085
Property #: 21199830297
Fed Reg Date: 12/25/1998
Fort Benning
Co: Muscogee GA 31905–
Status: Unutilized
Comment: 192 sq. ft., needs rehab, most recent use—fuel/pol bldg., off-site use only.

Bldg. 5347
Property #: 21199830298
Fed Reg Date: 12/25/1998
Fort Benning
Co: Muscogee GA 31905–
Status: Unutilized
Comment: 11,020 sq. ft., needs rehab, most recent use—maint. bldg., off-site use only.

Bldg. 9103
Property #: 21199830301
Fed Reg Date: 12/25/1998
Fort Benning
Co: Muscogee GA 31905–
Status: Unutilized
Comment: 3378 sq. ft., needs rehab, most recent use—veh. maint. shop, off-site use only.

Bldg. T–288
Property #: 21199840130
Fed Reg Date: 11/20/1998
Fort Stewart
Hinesville Co: Liberty GA 31314–
Status: Excess
Comment: 2500 sq. ft., poor condition, most recent use—MP station, off-site use only.

Bldg. T–291
Property #: 21199840131
Fed Reg Date: 11/20/1998
Fort Stewart
Hinesville Co: Liberty GA 31314–
Status: Excess
Comment: 5220 sq. ft., poor condition, most recent use—MP station, off-site use only.

Bldg. T–292
Property #: 21199840132
Fed Reg Date: 11/20/1998
Fort Stewart
Hinesville Co: Liberty GA 31314–
Status: Excess
Comment: 5220 sq. ft., poor condition, most recent use—MP station, off-site use only.

Bldg. T–294
Property #: 21199840133
Fed Reg Date: 11/20/1998
Fort Stewart
Hinesville Co: Liberty GA 31314–
Status: Excess
Comment: 5220 sq. ft., poor condition, most recent use—admin., off-site use only.

Land

Land (Railbed)
Property #: 21199440440
Fed Reg Date: 12/25/1998
Fort Benning
Co: Muscogee GA 31905–
Status: Unutilized
Comment: 17.3 acres extending 1.24 miles, no known utilities potential.

Hawaii

Building

P–88
Property #: 21199030324
Fed Reg Date: 12/25/1998
Aliamanu Military
Reservation
Honolulu Co: Honolulu HI 96818–
Location: Approximately 600 feet from Main Gate on Aliamanu Drive.
Status: Unutilized
Comment: 45,216 sq. ft. underground tunnel complex, pres. of asbestos clean-up required of contamination, use of respirator required by those entering property, use limitations.

Bldg. T–675A
Property #: 21199640202
Fed Reg Date: 12/25/1998
Schofield Barracks
Wahiawa HI 96786
Status: Unutilized
Comment: 4365 sq. ft., most recent use—office, off-site use only.

Bldg. T–337
Property #: 21199640203
Fed Reg Date: 12/25/1998
Fort Shafter
Honolulu Co: HI 96819
Status: Unutilized
Comment: 132 sq. ft., most recent use—storage, off-site use only.

Illinois

Building

Bldg. 54,
Property #: 21199620666
Fed Reg Date: 12/25/1998
Rock Island Arsenal
Rock Island Co: Rock Island IL 61299–
Status: Unutilized
Comment: 2000 sq. ft., most recent use—oil storage, needs repair, off-site use only.

Iowa

Building

Bldg. 46,
Property #: 21199840135
Fed Reg Date: 11/20/1998
Des Moines Reserve Complex
Des Moines Co: Polk IA 50315–5899
Status: Unutilized
Comment: 20,944 sq. ft., presence of asbestos/lead paint, most recent use—officer quarters/admin., historical/National Register.

Bldg. 49,
Property #: 21199840136
Fed Reg Date: 11/20/1998
Des Moines Reserve Complex
Des Moines Co: Polk IA 50315–5899
Status: Underutilized
Comment: 2100 sq. ft., most recent use—chapel, historical/National Register.

Kansas

Biluding

Bldg. 166, Fort Riley
Property #: 21199410325
Fed Reg Date: 12/25/1998
Ft. Riley Co: Geary KS 66442–
Status: Unutilized
Comment: 3803 sq. ft., 3-story brick residence, needs rehab, presence of asbestos, located within National Registered Historic District.

Bldg. 184, Fort Riley
Property #: 21199430146
Fed Reg Date: 12/25/1998
Ft. Riley, KS 66442–
Status: Unutilized
Comment: 1959 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—boiler plant, historic district.

Bldg. P–313, Fort Riley
Property #: 21199620668
Fed Reg Date: 12/25/1998
Ft. Riley, KS 66442–
Status: Unutilized
Comment: 6222 sq. ft., most recent use—admin. bldg., needs repair, possible asbestos.

Bldg. S–404
Property #: 21199730235
Fed Reg Date: 12/25/1998
Fort Leavenworth
Leavenworth, KS 66027–
Status: Unutilized
Comment: 4795 sq. ft., possible asbestos/lead paint, most recent use—hospital clinic house, off-site use only.

Bldg. P–390
Property #: 21199740295
Fed Reg Date: 12/25/1998
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 4713 sq. fet., present of lead based paint, most recent use—hospital clinic, off-site use only.

Bldg. P–63

Property #: 21199810295
Fed Reg Date: 12/25/1998
Fort Leavenworth
Leavenworth Co: Leavenworth KS 66027–
Status: Unutilized
Comment: 9376 sq. ft., concrete, possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–323
Property #: 21199810297
Fed Reg Date: 12/25/1998
Fort Leavenworth
Leavenworth Co: Leavenworth KS 66027–
Status: Unutilized
Comment: 720 sq. ft., most recent use—boy scout bldg., off-site use only.

Bldg. T–688
Property #: 21199810298
Fed Reg Date: 12/25/1998
Fort Leavenworth
Leavenworth Co: Leavenworth KS 66027–
Status: Unutilized
Comment: 823 sq. ft., possible lead paint, most recent use—girl scout bldg., off-site use only.

Bldg. T–895
Property #: 21199810299
Fed Reg Date: 12/25/1998
Fort Leavenworth
Leavenworth Co: Leavenworth KS 66027–
Status: Unutilized
Comment: 288 sq. ft., possible lead paint, most recent use—storage, off-site use only.

Bldg. P–1032
Property #: 21199810300
Fed Reg Date: 12/25/1998
Fort Leavenworth
Leavenworth Co: Leavenworth KS 66027–
Status: Unutilized
Comment: 728 sq. ft., most recent use—dog kennel, off-site use only.

Bldg. P–68
Property #: 21199820153
Fed Reg Date: 12/25/1998
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 2236 sq. ft., most recent use—vehicle storage, off-site use only.

Bldg. P–69
Property #: 21199820154
Fed Reg Date: 12/25/1998
Fort Leavenworth′
Leavenworth KS 66027–
Status: Unutilized
Comment: 224 sq. ft., most recent use—storage, off-site use only.

Bldg. P–93
Property #: 21199820155
Fed Reg Date: 12/25/1998
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 63 sq. ft., concrete, most recent use—storage, off-site use only.

Bldg. P–128
Property #: 21199820156
Fed Reg Date: 12/25/1998
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 79 sq. ft., concrete, most recent use—storage, off-site use only.

Bldg. P–321
Property #: 21199820157
Fed Reg Date: 12/25/1998
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 600 sq. ft., most recent use—picnic shelter, off-site use only.

Bldg. P–347
Property #: 21199820158
Fed Reg Date: 12/25/1998
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 2135 sq. ft., most recent use—bath house, off-site use only.

Bldg. P–397
Property #: 21199820159
Fed Reg Date: 12/25/1998
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 80 sq. ft., most recent use—storage, off-site use only.

Bldg. S–809
Property #: 21199820160
Fed Reg Date: 12/25/1998
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 39 sq. ft., most recent use—access control, off-site use only.

Bldg. S–830
Property #: 21199820161
Fed Reg Date: 12/25/1998
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 5789 sq. ft., most recent use—underground storage, off-site use only.

Bldg. S–831
Property #: 21199820162
Fed Reg Date: 12/25/1998
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 5789 sq. ft., most recent use—underground storage, off-site use only.

Bldg. T–2360
Property #: 21199830310
Fed Reg Date: 12/25/1998
Fort Riley
Fort Riley KS
Status: Unutilized
Comment: 4534 sq. ft., needs major rehab, most recent use—aces. fac.

Bldgs. P–104, P–105, P–106
Property #: 21199830313
Fed Reg Date: 12/25/1998
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 81 sq. ft., most recent use—storage, off-site use only.

Bldg. P–108
Property #: 21199830314
Fed Reg Date: 12/25/1998
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 138 sq. ft., most recent use—storage, off-site use only.

Bldg. P–147
Property #: 21199830315
Fed Reg Date: 12/25/1998
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 378 sq. ft., most recent use—storage, off-site use only.

Bldgs. P–163, P–169
Property #: 21199830316
Fed Reg Date: 12/25/1998
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 87 sq. ft., most recent use—storage, off-site use only.

Bldg. P–164
Property #: 21199830317
Fed Reg Date: 12/25/1998
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 145 sq. ft., most recent use—storage, off-site use only.

Bldg. P–171
Property #: 21199830318
Fed Reg Date: 12/25/1998
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 144 sq. ft., most recent use—storage, off-site use only.

Bldg. P–172
Property #: 21199830319
Fed Reg Date: 12/25/1998
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 87 sq. ft., most recent use—storage, off-site use only.

Bldgs. P–173, P–174
Property #: 21199830320
Fed Reg Date: 12/25/1998
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 120 sq. ft., most recent use—storage, off-site use only.

Bldg. P–243
Property #: 21199830321
Fed Reg Date: 12/25/1998
Fort Leavenworth
Leavenworth KS 66027–
Status: Unutilized
Comment: 242 sq. ft., most recent use—industrial off-site use only.

Louisiana

Building

Bldg. 8405, Fort Polk
Property #: 21199640524
Fed Reg Date: 12/25/1998
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 1029 sq. ft., most recent use—office.

Bldg. 8407, Fort Polk
Property #: 21199640525
Fed Reg Date: 12/25/1998
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 2055 sq. ft., most recent use—admin.

Bldg. 84048, Fort Polk
Property #: 21199640526
Fed Reg Date: 12/25/1998
Ft. Polk Co: Vernon Parish LA 71459–

Status: Underutilized
Comment: 2055 sq. ft., most recent use—admin.

Bldg. 8414, Fort Polk
Property #: 21199640527
Fed Reg Date: 12/25/1998
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8423, Fort Polk
Property #: 21199640528
Fed Reg Date: 12/25/1998
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8424, Fort Polk
Property #: 21199640529
Fed Reg Date: 12/25/1998
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8426, Fort Polk
Property #: 21199640530
Fed Reg Date: 12/25/1998
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8427, Fort Polk
Property #: 21199640531
Fed Reg Date: 12/25/1998
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8428, Fort Polk
Property #: 21199640532
Fed Reg Date: 12/25/1998
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8429, Fort Polk
Property #: 21199640533
Fed Reg Date: 12/25/1998
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8430, Fort Polk
Property #: 21199640534
Fed Reg Date: 12/25/1998
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8431, Fort Polk
Property #: 21199640535
Fed Reg Date: 12/25/1998
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8432, Fort Polk
Property #: 21199640536
Fed Reg Date: 12/25/1998
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8433, Fort Polk
Property #: 21199640537
Fed Reg Date: 12/25/1998
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8446, Fort Polk
Property #: 21199640538
Fed Reg Date: 12/25/1998
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 2093 sq. ft., most recent use—admin.

Bldg. 8449, Fort Polk
Property #: 21199640539
Fed Reg Date: 12/25/1998
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 2093 sq. ft., most recent use—office.

Bldg. 8450, Fort Polk
Property #: 21199640540
Fed Reg Date: 12/25/1998
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 2093 sq. ft., most recent use—admin.

Bldg. 8458, Fort Polk
Property #: 21199640542
Fed Reg Date: 12/25/1998
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8459, Fort Polk
Property #: 21199640543
Fed Reg Date: 12/25/1998
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8460, Fort Polk
Property #: 21199640544
Fed Reg Date: 12/25/1998
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8461, Fort Polk
Property #: 21199640545
Fed Reg Date: 12/25/1998
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8462, Fort Polk
Property #: 21199640546
Fed Reg Date: 12/25/1998
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8463, Fort Polk
Property #: 21199640547
Fed Reg Date: 12/25/1998
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8501, Fort Polk
Property #: 21199640548
Fed Reg Date: 12/25/1998
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 1687 sq. ft., most recent use—office.

Bldg. 8502, Fort Polk
Property #: 21199640549
Fed Reg Date: 12/25/1998
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 1029 sq. ft., most recent use—office.

Bldg. 8541, Fort Polk
Property #: 21199640551
Fed Reg Date: 12/25/1998
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8542, Fort Polk
Property #: 21199640552
Fed Reg Date: 12/25/1998
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8543, Fort Polk
Property #: 21199640553
Fed Reg Date: 12/25/1998
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8544, Fort Polk
Property #: 21199640554
Fed Reg Date: 12/25/1998
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8545, Fort Polk
Property #: 21199640555
Fed Reg Date: 12/25/1998
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8546, Fort Polk
Property #: 21199640556
Fed Reg Date: 12/25/1998
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8547, Fort Polk
Property #: 21199640557
Fed Reg Date: 12/25/1998
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8548, Fort Polk
Property #: 21199640558
Fed Reg Date: 12/25/1998
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8549, Fort Polk
Property #: 21199640559
Fed Reg Date: 12/25/1998
Ft. Polk Co: Vernon Parish LA 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Maryland

Building

Bldg. 370
Property #: 21199730256
Fed Reg Date: 12/25/1998
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Status: Unutilized
Comment: 19,583 sq. ft., most recent use—NCO club, possible asbestos/lead paint.

Bldg. 4039
Property #: 21199740304
Fed Reg Date: 12/25/1998
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Status: Unutilized
Comment: 249 sq. ft., concrete block, presence of asbestos/lead paint, most recent use—storage.

Bldg. 2446
Property #: 21199740305
Fed Reg Date: 12/25/1998
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. 2472
Property #: 21199740306
Fed Reg Date: 12/25/1998
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Status: Unutilized
Comment: 7670 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. 2802
Property #: 21199740307
Fed Reg Date: 12/25/1998
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/lead paint, most recent use—lab, off-site use only.

Bldg. 3179
Property #: 21199740308
Fed Reg Date: 12/25/1998
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Status: Unutilized
Comment: 7670 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. 4700
Property #: 21199740309
Fed Reg Date: 12/25/1998
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Status: Unutilized
Comment: 36,619 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. 2805
Property #: 21199740351
Fed Reg Date: 12/25/1998
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Status: Unutilized
Comment: 2208 sq. ft., presence of asbestos/lead paint, most recent use—lab, off-site use only.

Bldg. 6294
Property #: 21199810302
Fed Reg Date: 12/25/1998
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—custodial, off-site use only.

Bldg. 3176
Property #: 21199810303
Fed Reg Date: 12/25/1998
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Status: Unutilized
Comment: 7670 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. 0036A
Property #: 21199830322
Fed Reg Date: 12/25/1998
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Status: Unutilized
Comment: 149 sq. ft., presence of asbestos/lead paint, most recent use—storage.

Bldg. E5813
Property #: 21199830326
Fed Reg Date: 12/25/1998
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Status: Unutilized
Comment: 69 sq. ft., presence of asbestos/lead paint, most recent use—storage.

Bldg. 39
Property #: 21199840137
Fed Reg Date: 11/20/1998
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Status: Unutilized
Comment: 2791 sq. ft., presence of asbestos/lead paint, most recent use—housing, off-site use only.

Bldg. 0459E
Property #: 21199840138
Fed Reg Date: 11/20/1998
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Status: Unutilized
Comment: 320 sq. ft., poor condition, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 1102B
Property #: 21199840139
Fed Reg Date: 11/20/1998
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Status: Unutilized
Comment: 1600 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. E1455
Property #: 21199840140
Fed Reg Date: 11/20/1998
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Status: Unutilized
Comment: 36 sq. ft., poor condition, presence of asbestos/lead paint, most recent use—guard shack, off-site use only.

Minnesota

Land

Land
Property #: 21199120269
Fed Reg Date: 12/25/1998
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Status: Underutilized
Comment: Approx. 49 acres, possible contamination, secured area with alternate access.

Missouri

Building

Bldg. T599
Property #: 21199230260
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Underutilized
Comment: 18270 sq. ft., 1-story, presence of asbestos, most recent use—storehouse, off-site use only.

Bldg. T1311
Property #: 21199230261
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Underutilized
Comment: 2740 sq. ft., 1-story, presence of asbestos, most recent use—storehouse, off-site use only.

Bldg. T427
Property #: 21199330299
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Underutilized
Comment: 10245 sq. ft., 1-story, presence of asbestos, most recent use—post office, off-site use only.

Bldg. T2171
Property #: 21199340212
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1296 sq. ft., 1-story wood frame, most recent use—administrative, no handicap fixtures, lead base paint, off-site use only.

Bldg. T6822
Property #: 21199340219
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Underutilized
Comment: 4000 sq. ft., 1-story wood frame, most recent use—storage, no handicap fixtures, off-site use only.

Bldg. T1364
Property #: 21199420393
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Underutilized
Comment: 1144 sq. ft., 1-story, presence of lead base paint, most recent use—storage, off-site use only.

Bldg. T408
Property #: 21199420433
Fed Reg Date: 12/25/1998

Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Underutilized
Comment: 10296 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Bldg. T429
Property #: 21199420439
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Underutilized
Comment: 2475 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Bldg. T1497
Property #: 21199420441
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Underutilized
Comment: 4720 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Bldg. T2139
Property #: 21199420446
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Underutilized
Comment: 3663 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Bldg. T2191
Property #: 21199440334
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Excess
Comment: 4720 sq. ft., 2-story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks.

Bldg. T2197
Property #: 21199440335
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Excess
Comment: 4720 sq. ft., 2-story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks.

Bldg. T590
Property #: 21199510110
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Status: Excess
Comment: 3263 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only.

Bldg. T1246
Property #: 21199510111
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Status: Excess
Comment: 1144 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only.

Bldg. T2385
Property #: 21199510115
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Status: Excess
Comment: 3158 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only.

38 Bldgs.
Property #: 21199710125:
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Location: 1–16, 18, 20, 22, 24, 26–29, 31, 33–45 Depuy Street
Status: Unutilized
Comment: 1083–1485 sq. ft. each, needs repair, presence of asbestos, most recent use—family quarters.

Bldgs. T–2340 thru T2343
Property #: 21199710138
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Underutilized
Comment: 9267 sq. ft. each, most recent use—storage/general purpose.

Bldg. 1226
Property #: 21199730275
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1600 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. 1271
Property #: 21199730276
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2360 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 1280
Property #: 21199730277
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only.

Bldg. 1281
Property #: 21199730278
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2360 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only.

Bldg. 1282
Property #: 21199730279
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead Paint, most recent use—barracks, off-site use only.

Bldg. 1283
Property #: 21199730280
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 1284
Property #: 21199730281
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. 1285
Property #: 21199730282
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only.

Bldg. 1286
Property #: 21199730283
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. 1287
Property #: 21199730284
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only.

Bldg. 1288
Property #: 21199730285
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2360 sq. ft., presence of asbestos/lead paint, most recent use—dining facility, off-site use only.

Bldg. 1289
Property #: 21199730286
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000

Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only.

Bldg. 430
Property #: 21199810305
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 4100 sq. ft., presence of asbestos/lead paint, most recent use—Red Cross facility, off-site use only.

Bldg. 758
Property #: 21199810306
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only.

Bldg. 759
Property #: 21199810307
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only.

Bldg. 760
Property #: 21199810308
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/lead paint, off-site use only.

Bldgs. 761–766
Property #: 21199810309
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2400 sq. ft. each, presence of asbestos/lead paint, most recent use—classroom, off-site use only.

Bldg. 1650
Property #: 21199810311
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1676 sq. ft., presence of asbestos/lead paint, most recent use—union hall, off-site use only.

Bldg. 2111
Property #: 21199810312
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1600 sq. ft., presence of asbestos/lead paint, most recent use—union hall, off-site use only.

Bldg. 2170
Property #: 21199810313
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. 2204
Property #: 21199810315
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 3525 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. 2225
Property #: 21199810316
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 820 sq. ft., presence of lead paint, most recent use—storage, off-site use only.

Bldg. 2271
Property #: 21199810317
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 256 sq. ft., presence of lead paint, most recent use—storage, off-site use only.

Bldg. 2275
Property #: 21199810318
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 225 sq. ft., presence of lead paint, most recent use—storage, off-site use only.

Bldg. 2291
Property #: 21199810319
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 510 sq. ft., presence of lead paint, most recent use—storage, off-site use only.

Bldg. 2318
Property #: 21199810322
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 9267 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 2579
Property #: 21199810325
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 176 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 2580
Property #: 21199810326
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 200 sq. ft., presence of asbestos/lead paint, most recent use—generator plant, off-site use only.

Bldg. 4199
Property #: 21199810327
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 6030
Property #: 21199810328
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1000 sq. ft., presence of lead paint, poor condition, most recent use—storage, off-site use only.

Bldg. 386
Property #: 21199820163
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 4902 sq. ft., presence of asbestos/lead paint, most recent use—fire station, off-site use only.

Bldg. 401
Property #: 21199820164
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 9567 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. 801
Property #: 21199820165
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 17012 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only.

Bldg. 856
Property #: 21199820166
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 859
Property #: 21199820167
Fed Reg Date: 12/25/1998
Fort Leonard Wood

Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2400 sq. ft., presence of asbsestos/lead paint, most recent use—storage, off-site use only.

Bldg. 1242
Property #: 21199820168
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2360 sq. ft., presence of asbsestos/lead paint, most recent use—storage, off-site use only.

Bldg. 1265
Property #: 21199820169
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2360 sq. ft., presence of asbsestos/lead paint, most recent use—storage, off-site use only.

Bldg. 1267
Property #: 21199820170
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1144 sq. ft., presence of asbsestos/lead paint, most recent use—admin., off-site use only.

Bldg. 1272
Property #: 21199820171
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1144 sq. ft., presence of asbsestos/lead paint, most recent use—admin., off-site use only.

Bldg. 1277
Property #: 21199820172
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1144 sq. ft., presence of asbsestos/lead paint, most recent use—admin., off-site use only.

Bldgs. 2142, 2145, 2151–215
Property #: 21199820174
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 4720 sq. ft., presence of asbsestos/lead paint, most recent use—barracks, off-site use only.

Bldg. 2150
Property #: 21199820175
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2892 sq. ft., presence of asbsestos/lead paint, most recent use—dayroom, off-site use only.

Bldg. 2155
Property #: 21199820176
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1296 sq. ft., presence of asbsestos/lead paint, most recent use—admin., off-site use only.

Bldgs. 2156, 2157, 2163, 21
Property #: 21199820177
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only.

Bldg. 2165
Property #: 21199820178
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2892 sq. ft., presence of asbestos/lead paint, most recent use—dayroom, off-site use only.

Bldg. 2167
Property #: 21199820179
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldgs. 2169, 2181, 2182, 21
Property #: 21199820180
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only.

Bldg. 2186
Property #: 21199820181
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. 2187
Property #: 21199820182
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 2892 sq. ft., presence of asbestos/lead paint, most recent use—dayroom, off-site use only.

Bldgs. 2192, 2196, 2198
Property #: 21199820183
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only.

Bldgs. 2304, 2306
Property #: 21199820184
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 1625 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 12651
Property #: 21199820186
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 240 sq. ft., presence of lead paint, off-site use only.

Bldg. 1448
Property #: 21199830327
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 8450 sq. ft., presence of asbestos/lead paint, most recent use—training, off-site use only.

Bldg. 2210
Property #: 21199830328
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 808 sq. ft., concrete, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 2270
Property #: 21199830329
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Co: Pulaski MO 65473–5000
Status: Unutilized
Comment: 256 sq. ft., concrete, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Nevada

Land

Parcel A
Property #: 21199012049
Fed Reg Date: 12/25/1998
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: At Foot of Eastern slope of Mount Grant in Wassuk Range & S.W. edge of Walker Lane
Status: Unutilized
Comment: 160 acres, road and utility easements, no utility hookup, possible flooding problem.

Parcel B
Property #: 21199012056
Fed Reg Date: 12/25/1998
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–

Location: At foot of Eastern slope of Mount Grant in Wassuk Range & S.W. edge of Walker Lane
Status: Unutilized
Comment: 1920 acres, road and utility easements; no utility hookup; possible flooding problem.

Parcel C
Property #: 21199012057
Fed Reg Date: 12/25/1998
Hawthorme Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: South-southwest of Hawthorne along HWAAP's South Magazine Area at Western edge of State Route 359
Status: Unutilized
Comment: 85 acres; road & utility easements; no utility hookup.

Parcel D
Property #: 21199012058
Fed Reg Date: 12/25/1998
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: South-southwest of Hawthorne along HWAAP's South Magazine Area at western edge of State Route 359.
Status: Unutilized
Comment: 955 acres; road & utility easements; no utility hookup.

New Jersey

Building

Bldg. 22
Property #: 21199740311
Fed Reg Date: 12/25/1998
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Status: Unutilized
Comment: 4220 sq. ft., needs rehab, most recent use—machine shop, off-site use only.

Bldg. 178
Property #: 21199740312
Fed Reg Date: 12/25/1998
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Status: Unutilized
Comment: 2067 sq. ft., most recent use—research off-site use only.

Bldg. 642
Property #: 21199740314
Fed Reg Date: 12/25/1998
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Status: Unutilized
Comment: 280 sq. ft., most recent use—explosives testing, off-site use only.

Bldg. 732
Property #: 21199740315
Fed Reg Date: 12/25/1998
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Status: Unutilized
Comment: 9077 sq. ft., needs rehab, most recent use—storage, off-site use only.

Bldg. 1604
Property #: 21199740321
Fed Reg Date: 12/25/1998
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Status: Unutilized
Comment: 8519 sq. ft., most recent use—loading facility, off-site use only.

Bldg. 3117
Property #: 21199740322
Fed Reg Date: 12/25/1998
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Status: Unutilized
Comment: 100 sq. ft., most recent use—sentry station, off-site use only.

Bldg. 3201
Property #: 21199740324
Fed Reg Date: 12/25/1998
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Status: Unutilized
Comment: 1360 sq. ft., most recent use—water treatment plant, off-site use only.

Bldg. 3202
Property #: 21199740325
Fed Reg Date: 12/25/1998
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Status: Unutilized
Comment: 96 sq. ft., most recent use—snack bar, off-site use only.

Bldg. 3219
Property #: 21199740326
Fed Reg Date: 12/25/1998
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Status: Unutilized
Comment: 288 sq. ft., most recent use—snack bar, off-site use only.

New York

Building

Bldgs. 2400, 2402, 2404
Property #: 21199710131
Fed Reg Date: 12/25/1998
Stewart Army Subpost
New Windsor Co: Orange NY 12553–
Status: Unutilized
Comment: various sq. ft., most recent use—storage/dog kennel, need repairs, off-site use only.

Bldgs. 2308, 2310
Property #: 21199710132
Fed Reg Date: 12/25/1998
Stewart Army Subpost
New Windsor Co: Orange NY 12553–
Status: Unutilized
Comment: 425 & 1834 sq. ft., most recent use—gas pump house/office/motor pool, need repairs, off-site use only.

Bldgs. 1800, 1802, 1818
Property #: 21199710133
Fed Reg Date: 12/25/1998
Stewart Army Subpost
New Windsor Co: Orange NY 12553–
Status: Unutilized
Comment: approx. 6500 sq. ft. each, most recent use—barracks/storage, need repairs, off-site use only.

Bldgs. 2612, 2614, 2616
Property #: 21199710134
Fed Reg Date: 12/25/1998
Stewart Army Subpost
New Windsor Co: Orange NY 12553–
Status: Unutilized
Comment: 10052 sq. ft. each, most recent use—family housing, need repairs, off-site use only.

5 Bldgs.
Property #: 21199830330
Fed Reg Date: 12/25/1998
Stewart Army Subpost
United States Military Academy
New Windsor Co: Orange NY 12553–
Location: #1004, 1102, 1200, 1214, 1216
Status: Unutilized
Comment: 35,830 sq. ft., fair, possible asbestos/lead paint, most recent use—multipurpose.

Bldgs. 1202, 1204, 1206
Property #: 21199830331
Fed Reg Date: 12/25/1998
Stewart Army Subpost
United States Military Academy
New Windsor Co: Orange NY 12553–
Status: Unutilized
Comment: 21,972 sq. ft., poor, possible asbestos/lead paint, most recent use—admin/storage/barracks.

5 Bldgs.
Property #: 2119983032
Fed Reg Date: 12/25/1998
Stewart Army Subpost
United States Military Academy
New Windsor Co: Orange NY 12553–
Location: #1300, 1400, 1402, 1700, 1708
Status: Unutilized
Comment: 64,861 sq. ft., fair, possible asbestos/lead paint, most recent use—multipurpose.

8 Bldgs.
Property #: 21199830333
Fed Reg Date: 12/25/1998
Stewart Army Subpost
United States Military Academy
New Windsor Co: Orange NY 12553–
Location: #1400, 1600, 1602, 1604, 1606, 1608, 1610, 1612
Status: Unutilized
Comment: 52,873 sq. ft., poor, possible asbestos/lead paint, most recent use—barracks.

6 Bldgs.
Property #: 2119983034
Fed Reg Date: 12/25/1998
Stewart Army Subpost
United States Military Academy
New Windsor Co: Orange NY 12553–
Location: #1800, 1802, 1810, 1818, 2297, 2308
Status: Unutilized
Comment: 21,972 sq. ft., poor, possible asbestos/lead paint, most recent use—barracks/storage.

6 Bldgs.
Property #: 21199830335
Fed Reg Date: 12/25/1998
Stewart Army Subpost
United States Military Academy
New Windsor Co: Orange NY 12553–
Location: #1804, 1806, 1808, 1812, 1814, 1816
Status: Unutilized
Comment: 35,356 sq. ft., fair possible asbestos/lead paint, most recent use—admin/barracks/storage.

4 Bldgs.
Property #: 21199830336
Fed Reg Date: 12/25/1998
Stewart Army Subpost
United States Military Academy
New Windsor Co: Orange NY 12553–
Location: #2000, 2002, 2004, 2006
Status: Unutilized
Comment: 35,356 sq. ft., fair possible asbestos/lead paint, most recent use—lodging.

6 Bldgs.
Property #: 21199830337
Fed Reg Date: 12/25/1998
Stewart Army Subpost
United States Military Academy
New Windsor Co: Orange NY 12553–
Location: #:2200, 2202, 2206, 2208, 2210, 2216
Status: Unutilized
Comment: 15,750 sq. ft., fair, possible asbestos/lead paint, most recent use—plant bldgs.

9 Bldgs.
Property #: 21199830338
Fed Reg Date: 12/25/1998
Stewart Army Subpost
United States Military Academy
New Windsor Co: Orange NY 12553–
Location: #2310, 2408, 2410, 2412, 2414, 2416, 2418, 2420, 2422
Status: Unutilized
Comment: 33,763 sq. ft., fair, possible asbestos/lead paint, most recent use—shop/storage.

7 Bldgs.
Property #: 21199830339
Fed Reg Date: 12/25/1998
Stewart Army Subpost
United States Military Academy
New Windsor Co: Orange NY 12553–
Location: #2400, 2402, 2404, 2500, 2506, 2514, 2516
Status: Unutilized
Comment: 21,972 sq. ft., poor, possible asbestos/lead paint, most recent use—storage/admin.

5 Bldgs.
Property #: 21199830340
Fed Reg Date: 12/25/1998
Stewart Army Subpost
United States Military Academy
New Windsor Co: Orange NY 12553–
Location: #2508, 2510, 2512, 2518, 2520
Status: Unutilized
Comment: 22,137 sq. ft., fair, possible asbestos/lead paint, most recent use—storage/chapel annex/admin.

10 Bldgs.
Property #: 21199830341
Fed Reg Date: 12/25/1998
Stewart Army Subpost
United States Military Academy
New Windsor Co: Orange NY 12553–
Location: #2600, 2602–2607, 2609–2610, 2627
Status: Unutilized
Comment: 62,605 sq. ft., fair, possible asbestos/lead paint, most recent use—snack bar/club/storage.

9 Bldgs.
Property #: 21199830342
Fed Reg Date: 12/25/1998
Stewart Army Subpost
United States Military Academy
New Windsor Co: Orange NY 12553–
Location: #2608, 2619, 2623, 2611–2616
Status: Unutilized
Comment: 45,851 sq. ft., poor, possible asbestos/lead paint, most recent use—barracks/storage/housing.

8 Bldgs.
Property #: 21199830343
Fed Reg Date: 12/25/1998
Stewart Army Subpost
United States Military Academy
New Windsor Co: Orange NY 12553–
Location: #3000, 3002, 3004, 3006, 3010, 3012, 3014, 3016
Status: Unutilized
Comment: 47,395 sq. ft., poor, possible asbestos/lead paint, most recent use—housing/storage.

5 Bldgs.
Property #: 21199830344
Fed Reg Date: 12/25/1998
Stewart Army Subpost
United States Military Academy
New Windsor Co: Orange NY 12553–
Location: #3100, 3102, 3104, 3112, 3114
Status: Unutilized
Comment: 1654 sq. ft., poor, possible asbestos/lead paint, most recent use—storage sheds.

Bldgs. 1246, 1247, 1250
Property #: 21199830345
Fed Reg Date: 12/25/1998
West Point, U.S. Military Academy
Highlands Co: Orange NY 10996–
Status: Unutilized
Comment: 1703 sq. ft., poor, possible asbestos, most recent use—storage, off-site use only.

Bldg. T–35
Property #: 21199840143
Fed Reg Date: 11/20/1998
Fort Drum
Co: Jefferson NY 13602–
Status: Unutilized
Comment: 1296 sq. ft., most recent use—admin., off-site use only.

Bldg. S–149
Property #: 21199840144
Fed Reg Date: 11/20/1998
Fort Drum
Co: Jefferson NY 13602–
Status: Unutilized
Comment: 2488 sq. ft., most recent use—admin., off-site use only.

Bldg. T–250
Property #: 21199840145
Fed Reg Date: 11/20/1998
Fort Drum
Co: Jefferson NY 13602–
Status: Unutilized
Comment: 2360 sq. ft., most recent use—storage, off-site use only.

Bldg. T–254
Property #: 21199840146
Fed Reg Date: 11/20/1998
Fort Drum
Co: Jefferson NY 13602–
Status: Unutilized
Comment: 4720 sq. ft., most recent use—barracks, off-site use only.

Bldg. T–260
Property #: 21199840147
Fed Reg Date: 11/20/1998
Fort Drum
Co: Jefferson NY 13602–
Status: Unutilized
Comment: 2371 sq. ft., most recent use—HQ bldg., off-site use only.

Bldg. T–261
Property #: 21199840148
Fed Reg Date: 11/20/1998
Fort Drum
Co: Jefferson NY 13602–
Status: Unutilized
Comment: 1144 sq. ft., most recent use—HQ bldg., off-site use only.

Bldg. T–262
Property #: 21199840149
Fed Reg Date: 11/20/1998
Fort Drum
Co: Jefferson NY 13602–
Status: Unutilized
Comment: 1144 sq. ft., most recent use—HQ bldg., off-site use only.

Bldg. T–340
Property #: 21199840150
Fed Reg Date: 11/20/1998
Fort Drum
Co: Jefferson NY 13602–
Status: Unutilized
Comment: 2360 sq. ft., most recent use—storage, off-site use only.

Bldg. T–392
Property #: 21199840151
Fed Reg Date: 11/20/1998
Fort Drum
Co: Jefferson NY 13602–
Status: Unutilized
Comment: 2740 sq. ft., most recent use—storage, off-site use only.

Bldg. T–413
Property #: 21199840152
Fed Reg Date: 11/20/1998
Fort Drum
Co: Jefferson NY 13602–
Status: Unutilized
Comment: 3663 sq. ft., most recent use—admin., off-site use only.

Bldg. T–415
Property #: 21199840153
Fed Reg Date: 11/20/1998
Fort Drum
Co: Jefferson NY 13602–
Status: Unutilized
Comment: 1676 sq. ft., most recent use—HQ bldg., off-site use only.

Bldg. T–530
Property #: 21199840154
Fed Reg Date: 11/20/1998
Fort Drum
Co: Jefferson NY 13602–
Status: Unutilized
Comment: 2588 sq. ft., most recent use—HQ bldg., off-site use only.

Bldg. T–840
Property #: 21199840155
Fed Reg Date: 11/20/1998
Fort Drum
Co: Jefferson NY 13602–
Status: Unutilized
Comment: 2803 sq. ft., most recent use—dining, off-site use only.

Bldg. T–892
Property #: 21199840156
Fed Reg Date: 11/20/1998
Fort Drum
Co: Jefferson NY 13602–
Status: Unutilized
Comment: 2740 sq. ft., most recent use—HQ bldg., off-site use only.

Bldg. T–991
Property #: 21199840157
Fed Reg Date: 11/20/1998
Fort Drum
Co: Jefferson NY 13602–
Status: Unutilized
Comment: 2740 sq. ft., most recent use—HQ bldg., off-site use only.

Bldg. P–996
Property #: 21199840158

Fed Reg Date: 11/20/1998
Fort Drum
Co: Jefferson NY 13602–
Status: Unutilized
Comment: 9602 sq. ft., most recent use—storage, off-site use only.

Bldg. S–998
Property #: 21199840159
Fed Reg Date: 11/20/1998
Fort Drum
Co: Jefferson NY 13602–
Status: Unutilized
Comment: 1432 sq. ft., most recent use—storage, off-site use only.

Bldg. T–2159
Property #: 21199840160
Fed Reg Date: 11/20/1998
Fort Drum
Co: Jefferson NY 13602–
Status: Unutilized
Comment: 1948 sq. ft., off-site use only.

Bldg. T–2339
Property #: 21199840163
Fed Reg Date: 11/20/1998
Fort Drum
Co: Jefferson NY 13602–
Status: Unutilized
Comment; 2027 sq. ft., most recent use—museum, off-site use only.

Bldg. P–2415
Property #: 21199840164
Fed Reg Date: 11/20/1998
Fort Drum
Co: Jefferson NY 13602–
Status: Unutilized
Comment; 214 sq. ft., most recent use—incinerator, off-site use only.

Bldg. P–21572
Property #: 21199840167
Fed Reg Date: 11/20/1998
Fort Drum
Co: Jefferson NY 13602–
Status: Unutilized
Comment; 240 sq. ft., most recent use—bunker, off-site use only.

Land—6.965 Acres
Property #: 21199540018
Fed Reg Date: 12/25/1998
Queensbury Co: Warren NY 12801–
Status: Unutilized
Comment: 6.96 acres of vacant land, located in industrial area, potential utilities.

North Dakota

Building

Bldg. 1101
Property #: 21199640213
Fed Reg Date: 12/25/1998
Stanley R. Mickelsen
Safeguard Complex Nekoma Co: Ramsey ND 58355–
Status: Unutilized
Comment: 2259 sq. ft., earth covered concrete bldg., needs rehab, off-site use only.

Bldg. 1110
Property #: 21199640214
Fed Reg Date: 12/25/1998
Stanley R. Mickelsen
Safeguard Complex
Nekoma Co: Ramsey ND 58355–
Status: Unutilized
Comment: 11956 sq. ft., concrete, needs rehab, off-site use only.

Bldg. 2101
Property #: 21199640215
Fed Reg Date: 12/25/1998
Stanley R. Mickelsen Safeguard Complex
Nekoma Co: Cavalier ND 58249–
Status: Unutilized
Comment: 2259 sq. ft., earth covered concrete bldg., needs rehab, off-site use only.

Bldg. 2110
Property #: 21199640216
Fed Reg Date: 12/25/1998
Stanley R. Mickelsen Safeguard Complex
Nekoma Co: Cavalier ND 58249–
Status: Unutilized
Comment: 11956 sq. ft., concrete, needs rehab, off-site use only.

Bldg. 4101
Property #: 21199640217
Fed Reg Date: 12/25/1998
Stanley R. Mickelsen Safeguard Complex
Nekoma Co: Walsh ND 58355–
Status: Unutilized
Comment: 2259 sq. ft., earth covered concrete bldg, needs rehab, off-site use only.

Bldg. 4110
Property #: 21199640218
Fed Reg Date: 12/25/1998
Stanley R. Mickelsen Safeguard Complex
Status: Unutilized
Nekoma Co: Walsh ND 58355–
Comment: 11956 sq. ft., concrete, needs rehab, off-site use only.

Bldg. 405
Property #: 21199840168
Fed Reg Date: 11/20/98
Stanley R. Mickelsen Safeguard Complex
Nekoma Co: Cavalier ND 58355–
Status: Unutilized
Comment: 520 sq. ft., concrete block, most recent use—fuel oil pumping facility, off-site use only.

Ohio

Building

15 Units
Property #: 21199230354
Fed Reg Date: 12/25/1998
Military Family Housing
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Status: Excess
Comment: 3 bedroom (7 units)—1,824 sq. ft. each, 4 bedroom (8 units)—2,430 sq. ft. each, 2-story wood frame, presence of asbestos, off-site use only.

7 Units
Property #: 21199230355
Fed Reg Date: 12/25/1998
Military Family Housing Garages
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Status: Excess
Comment: 1–4 stall garage and 6–3 stall garages, presence of asbestos, off-site use only.

Oklahoma

Building

Bldg. T–2606
Property #: 21199011273
Fed Reg Date: 12/25/1998
2606 Currie Road
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 2722 sq. ft.; possible asbestos, one floor wood frame; most recent use—Headquarters Bldg.

Bldg. T–838, Fort Sill
Property #: 21199220609
Fed Reg Date: 12/25/1998
838 Macomb Road
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 151 sq. ft., wood frame, 1 story, off-site removal only, most recent use—vet facility (quarantine stable).

Bldg. T–954, Fort Sill
Property #: 21199240659
Fed Reg Date: 12/25/1998
954 Quinette Road
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 3571 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—motor repair shop.

Bldg. T–1050, Fort Sill
Property #: 21199240660
Fed Reg Date: 12/25/1998
1050 Quinette Road
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 6240 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—barracks.

Bldg. T–1051, Fort Sill
Property #: 21199240661
Fed Reg Date: 12/25/1998
1051 Quinette Road
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 6240 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—barracks.

Bldg. T–2740, Fort Sill
Property #: 21199240669
Fed Reg Date: 12/25/1998
2740 Miner Road
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 8210 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—enlisted barracks.

Bldg. T–4050, Fort Sill
Property #: 21199240676
Fed Reg Date: 12/25/1998
4050 Pitman Street
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 3177 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storage.

Bldg. P–3032, Fort Sill
Property #: 21199240678
Fed Reg Date: 12/25/1998
3032 Haskins Road
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 101 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—general storehouse.

Bldg. T–3325, Fort Sill
Property #: 21199240681
Fed Reg Date: 12/25/1998
3325 Naylor Road
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 8832 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—warehouse.

Bldg. P–2610, Fort Sill
Property #: 21199330372

Fed Reg Date: 12/25/1998
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 512 sq. ft., 1 story, possible asbestos, most recent use—classroom, off-site use only.

Bldg. T–1652, Fort Sill
Property #: 21199330380
Fed Reg Date: 12/25/1998
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1505 sq. ft., 1 story wood, possible asbestos, most recent use—storage, off-site use only.

Bldg. T–2705, Fort Sill
Property #: 21199330384
Fed Reg Date: 12/25/1998
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1601 sq. ft., 2 story wood, possible asbestos, most recent use—storage, off-site use only.

Bldg. T–3026, Fort Sill
Property #: 21199330392
Fed Reg Date: 12/25/1998
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 2454 sq. ft., 1 story, possible asbestos, most recent use—storage, off-site use only.

Bldg. T–5637, Fort Sill
Property #: 21199330419
Fed Reg Date: 12/25/1998
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1606 sq. ft., 1 story, possible asbestos, most recent use—storage, off-site use only.

Bldg. T–4226
Property #: 21199440384
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–
Status: Unutilized
Comment: 114 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only.

Bldg. P–1015, Fort Sill
Property #: 21199520197
Fed Reg Date: 12/25/1998
Lawton Co: Comanche OK 73501–5100
Status: Unutilized
Comment: 15402 sq. ft., 1-story, most recent use—storage, off-site use only.

Bldg. T–2648, Fort Sill
Property #: 21199540022
Fed Reg Date: 12/25/1998
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 9407 sq. ft., 1 story wood frame, possible asbestos/lead paint, off-site removeal only, most recent use—general purpose warehouse.

Bldg. T–2649, Fort Sill
Property #: 21199540024
Fed Reg Date: 12/25/1998
2649 Tacy Street
Lawton Co: Comanche OK 73503–5100
Status: Excees
Comment: 9374 sq. ft., 1 story wood frame, possible asbestos/lead paint, off-site removal only, most recent use—general storehouse.

Bldg. T–4036, Fort Sill
Property #: 21199540034
Fed Reg Date: 12/25/1998
4036 Currie Road
Lawton Co: Comanche OK 73503–5100
Status: Excess
Comment: 4532 sq. ft., 1 story wood frame, possible asbestos/lead paint, off-site removal only, most recent use—classroom.

Bldg. T366, Fort Sill
Property #: 21199610740
Fed Reg Date: 12/25/1998
Lawton Co: Comanche OK 73503–
Status: Unutilized
Comment: 482 sq. ft., possible asbestos, most recent use—storage, off-site use only.

Building T–598
Property #: 21199710029
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 744 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only.

Building T–1601
Property #: 21199710032
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 5,258 sq. ft., possible asbestos and leadpaint, most recent use—chapel, off-site use only.

Building P–1800
Property #: 21199710033
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 2,545 sq. ft., possible asbestos and leadpaint, most recent use—military equipment, off-site use only.

Building P–1806
Property #: 21199710035
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 44 sq. ft., possible asbestos and leadpaint, most recent use—utility, off-site use only.

Building T–2035
Property #: 21199710039
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 18,157 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only.

Building T–2426
Property #: 21199710041
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 8,876 sq. ft., possible asbestos and leadpaint, most recent use—office/storage, off-site use only.

Building T–2451
Property #: 21199710043
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 9,470 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only.

Building T–2607
Property #: 21199710044
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 6,743 sq. ft., possible asbestos and leadpaint, most recent use—classroom, off-site use only.

Building T–2608
Property #: 21199710045
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 6,737 sq. ft., possible asbestos and leadpaint, most recent use—classroom, off-site use only.

Building T–2952
Property #: 21199710047
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 4,327 sq. ft., possible asbestos and leadpaint, most recent use—motor repair shop, off-site use only.

Building T–2953
Property #: 21199710048
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 114 sq. ft., possible asbestos and leadpaint, most recent use—storehouse, off-site use only.

Building T–3152
Property #: 21199710051
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 3,151 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only.

Building T–3153
Property #: 21199710052
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 3,151 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only.

Building T–3154
Property #: 21199710053
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 3,151 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only.

Building T–3155
Property #: 21199710054
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized

Comment: 3,151 sq. ft., possible asbestos and leadpaint, most recent use—repair shop, off-site use only.

Building T–4009
Property #: 21199710056
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 2,817 sq. ft., possible asbestos and leadpaint, most recent use—classroom, off-site use only.

Building T–4010
Property #: 21199710057
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 2,815 sq. ft., possible asbestos and leadpaint, most recent use—office, off-site use only.

Building T–4011
Property #: 21199710058
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 9,456 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only.

Building T–4026
Property #: 21199710059
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 9,597 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only.

Building T–4030
Property #: 21199710060
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 9,618 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only.

Building T–4068
Property #: 21199710061
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 2,750 sq. ft., possible asbestos and leadpaint, most recent use—office, off-site use only.

Building T–4069
Property #: 21199710062
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 2,750 sq. ft., possible asbestos and leadpaint, most recent use—office, off-site use only.

Building T–4070
Property #: 21199710063
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 2,750 sq. ft., possible asbestos and leadpaint, most recent use—office, off-site use only.

Building P–5042
Property #: 21199710066
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 119 sq. ft., possible asbestos and leadpaint, most recent use—heatplant, off-site use only.

Building T–5093
Property #: 21199710067
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 9,361 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only.

6 Buildings
Property #: 21199710085
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: P–6449, S–6451, T–6452, P–6460, P–6463, S–6450
Status: Unutilized
Comment: various sq. ft., possible asbestos and leadpaint, most recent use—range support, off-site use only.

4 Buildings
Property #: 21199710086
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: T–6465, T–6466, T–6467, T–6468
Status: Unutilized
Comment: various sq. ft., possible asbestos and leadpaint, most recent use—range support, off-site use only.

Building P–6539
Property #: 21199710087
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1,483 sq. ft., possible asbestos and leadpaint, most recent use—office, off-site use only.

Bldg. T–2751, Fort Sill
Property #: 21199720209
Fed Reg Date: 12/25/1998
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 19,510 sq. ft., most recent use—admin., possible asbestos/leadpaint, off-site use only.

Bldg. T–205
Property #: 21199730343
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 95 sq. ft., possible asbestos/leadpaint, most recent use—waiting shelter, off-site use only.

Bldg. T–208
Property #: 21199730344
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 20525 sq. ft., possible asbestos/lead paint, most recent use—training center, off-site use only.

Bldg. T–210
Property #: 21199730345
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 19,049 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. T–214
Property #: 21199730346
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 6332 sq. ft., possible asbestos/lead paint, most recent use—training center, off-site use only.

Bldgs. T–215, T–216
Property #: 21199730347
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 6300 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–217
Property #: 21199730348
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 6394 sq. ft., possible asbestos/lead paint, most recent use—training center, off-site use only.

Bldg. T–219, T–220
Property #: 21199730349
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 152 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–810
Property #: 21199730350
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 7205 sq. ft., possible asbestos/lead paint, most recent use—hay storage, off-site use only.

Bldgs. T–837, T–839
Property #: 21199730351
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: approx. 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. P–902
Property #: 21199730352
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 101 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. P–934
Property #: 21199730353
Fed Reg Date: 12/25/1998

Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 402 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. P–936
Property #: 21199730354
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 342 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. S–956
Property #: 21199730355
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1602 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–1177
Property #: 21199730356
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 183 sq. ft., possible asbestos/lead paint, most recent use—snack bar, off-site use only.

Bldg. T–1468, T–1469
Property #: 21199730357
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 114 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–1470
Property #: 21199730358
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 3120 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–1508
Property #: 21199730359
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 3176 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–1940
Property #: 21199730360
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1400 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–1944
Property #: 21199730361
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 449 sq. ft., possible asbestos/lead paint, most recent use—lead paint, off-site use only.

Bldg. T–1954, T–2022
Property #; 21199730362
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–2180
Property #: 21199730363
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: possible asbestos/lead paint, most recent use—vehicle maint. facility, off-site use only.

Bldg. T–2184
Property #: 21199730364
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 454 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–2185
Property #: 21199730365
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 151 sq. ft., possible asbestos/lead paint, most recent use—fuel storage, off-site use only.

Bldgs. T–2186, T–2188, T–21
Property #: 21199730366
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1656–3583 sq. ft., possible asbestos/lead paint, most recent use—vehicle maint. shop, off-site use only.

Bldg. T–2187
Property #: 21199730367
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1673 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–2209
Property #: 21199730368
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1257 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldgs. T–2240, T–2241
Property #: 21199730369
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: approx. 9500 sq. ft., possible asbestos/lead paint, most recnt use—storage, off-site use only.

Bldgs. T–2262, T–2263
Property #: 21199730370
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: approx. 3100 sq. ft., possible asbestos/lead paint, most recent use—maint. shop, off-site use only.

Bldgs. T–2271, T–2272
Property #: 21199730371
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 232 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldgs. T–2291 thru T–2296
Property #: 21199730372
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 400 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

5 Bldgs.
Property #: 21199730373
Fed Reg Date: 12/25/1998
Fort Sill
T–2300, T–2301, T–2303, T–2306, T–2307
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: various sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–2406
Property #: 21199730374
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 114 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

4 Bldgs.
Property #: 21199730375
Fed Reg Date: 12/25/1998
Fort Sill
#T–2427, T–2431, T–2433,
T–2449
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: various sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

3 Bldgs.
Property #: 21199730376
Fed Reg Date: 12/25/1998
Fort Sill
#T–2430, T–2432, T–2435
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: approx. 8900 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. T–2434
Property #: 21199730377
Fed Reg Date: 12/25/1998
Fort Sill

Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 8997 sq. ft., possible asbestos/lead paint, most recent use—vehicle maint. shop, off-site use only.

Bldg. T–2606
Property #: 21199730378
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 3850 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–2746
Property #: 21199730379
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 4105 sq. ft., possible asbestos/lead paint, most recent use—barracks, off-site use only.

Bldg. T–2800, T–2809, T–28
Property #: 21199730380
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: approx. 19,000 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–2922
Property #:21199730381
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 3842 sq ft., possible asbestos/lead paint, most recent use—chapel, off-site use only.

Bldg. T–2963, T–2964, T–29
Property #:21199730382
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: approx. 3000 sq. ft., possible asbestos/lead paint, most recent use—maint. shop, off-site use only.

Bldgs. T–3001, T–3006
Property #: 21199730383
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: approx. 9300 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–3025
Property #: 21199730384
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 5259 sq. ft., possible asbestos/lead paint, most recent use—museum, off-site use only.

Bldg. T–3314
Property #: 21199730385
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 229 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldgs. T–3318, T–3324, T–33
Property #: 21199730386
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 8832–9048 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–3323
Property #: 21199730387
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 8832 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. T–3328
Property #: 21199730388
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 9030 sq. ft., possible asbestos/lead paint, most recent use—refuse, off-site use only.

Bldgs. T–4021, T–4022
Property #: 21199730389
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 442–869 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–4065
Property #: 21199730390
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 3145 sq. ft., possible asbestos/lead paint, most recent use—maint. shop off-site use only.

Bldg. T–4067
Property #: 21199730391
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1032 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–4281
Property #: 21199730392
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 9405 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldgs. T–4401, T–4402
Property #: 21199730393
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 2260 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

5 Bldgs.
Property #: 21199730394
Fed Reg Date: 12/25/1998
Fort Sill
#: T–4403 thru T–4406, T–4408
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 2263 sq. ft., possible asbestos/lead paint, most recent use—barracks, off-site use only.

Bldg. T–4407
Property #: 21199730395
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 3070 sq. ft., possible asbestos/lead paint, most recent use—dining facility, off-site use only.

4 Bldgs.
Property #: 21199730396
Fed Reg Date: 12/25/1998
Fort Sill
#: T–4410, T–4414, T–4415, T–4418
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1311 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

5 Bldgs.
Property #: 21199730397
Fed Reg Date: 12/25/1998
Fort Sill
#: T–4411 thru T–4413, T–4416 thru T–4417
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1244 sq. ft., possible asbestos/lead paint, most recent use—showers, off-site use only.

Bldg. T–4421
Property #: 21199730398
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 3070 sq. ft., possible asbestos/lead paint, most recent use—dining, off-site use only.

10 Bldgs.
Property #: 21199730399
Fed Reg Date: 12/25/1998
Fort Sill
#: T–4422 thru T–4427, T–4431 thru T–4434
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 2263 sq. ft., possible asbestos/lead paint, most recent use—barracks, off-site use only.

6 Bldgs.
Property #: 21199730400
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: #: T–4436, T–4440, T–4444, T–4445, T–4448, T–4449
Status: Unutilized
Comment: 1311–2263 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

5 Bldgs.
Property #: 21199730401
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100

Location #T–4441, T–4442, T–4443, T–4446, T–4447
Status: Unutilized
Comment: 1244 sq. ft., possible asbestos/lead paint, most recent use showers, off-site use only.

3 Bldgs.
Property #: 21199730402
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: #T–4451, T–4460, T–4481
Status: Unutilized
Comment: various sq. ft., possible asbestos/lead paint, most recent use—dining, off-site use only.

Bldgs. T–4461, T–4479
Property #: 21199730404
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 2265 sq. ft., possible asbestos/lead paint, most recent use—dayroom, off-site use only.

5 Bldgs.
Property #: 21199730405
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: #T–4469, T–4470, T–4475, T–4478, T–4480
Status: Unutilized
Comment: 1311–2265 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

4 Bldgs.
Property #: 21199730406
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: #T–471, T–4472, T–4473, T–4477
Status: Unutilized
Comment: approx. 1244 sq. ft., possible asbestos/lead paint, most recent use—showers, off-site use only.

Bldg. T–4707
Property #: 21199730407
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 160 sq. ft., possible asbestos/lead paint, most recent use—waiting shelter, off-site use only.

Bldg. T–5005
Property #: 21199730408
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 3206 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–5041
Property #: 21199730409
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 763 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldgs. T–5044, T–5045
Property #: 21199730410
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1798/1806 sq. ft., possible asbestos/lead paint, most recent use—class rooms, off-site use only.

4 Bldgs.
Property #: 21199730411
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: #: T–5046, T–5047, T–5048, T–5049
Status: Unutilized
Comment: various sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. T–5094
Property #: 21199730412
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 3204 sq. ft., possible asbestos/lead paint, most recent use—maint. shop, off-site use only.

Bldg. T–5095
Property #: 21199730413
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 3223 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–5420
Property #: 21199730414
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 189 sq. ft., possible asbestos/lead paint, most recent use—fuel storage, off-site use only.

Bldg. T–5595
Property #: 21199730415
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 695 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. T–5639
Property #: 21199730416
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 10,720 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldgs. T–7291
Property #: 21199730417
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 224/840 sq. ft., possible asbestos/lead paint, most recent use—kennel, off-site use only.

Bldg. T–7775
Property #: 21199730419
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1452 sq. ft., possible asbestos/lead paint, most recent use—private club, off-site use only.

Bldg. P–901
Property #: 21199740334
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 101 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. P841
Property #: 21199810353
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 192 sq. ft., possible asbestos/lead paint, most recent use—dispatch, off-site use only.

Bldg. S955
Property #: 21199810354
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 854 sq. ft., possible asbestos/lead paint, most recent use—training, off-site use only.

Bldg. P1438
Property #: 21199810355
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 1410 sq. ft., possible asbestos/lead paint, most recent use—clubhouse, off-site use only.

Bldg. 4463
Property #: 21199810357
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 2262 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. S–4913
Property #: 21199810358
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 82 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. P–5028
Property #: 21199810359
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 23 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. S–6020
Property #: 21199810363
Fed Reg Date: 12/25/1998

Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 104 sq. ft., possible asbestos/lead paint, most recent use—shelter, off-site use only.

Bldg. S–6049
Property #: 21199810364
Fed Reg Date: 12/25/1998
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comment: 104 sq. ft., possible asbestos/lead paint, most recent use—shelter, off-site use only.

Pennsylvania

Building

Bldg. T–3–87
Property #: 21199740337
Fed Reg Date: 12/25/1998
Fort Indiantown Gap
Annville Co: Lebanon PA 17003–5000
Status: Unutilized
Comment: 1144 sq. ft., most recent use—classroom, off-site use only.

South Carolina

Building

Bldg. 5412
Property #: 21199510139
Fed Reg Date: 12/25/1998
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Status: Excess
Comment: 3900 sq. ft., 1-story, wood frame, needs rehab, most recent use—admin., off-site use only.

Bldg. 3499
Property #: 21199730310
Fed Reg Date: 12/25/1998
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Status: Unutilized
Comment: 3724 sq. ft., needs repair, most recent use—admin.

Bldg. 2441
Property #: 21199820187
Fed Reg Date: 12/25/1998
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Status: Unutilized
Comment: 2160 sq. ft., needs repair, most recent use—admin.

Bldg. 3605
Property #: 21199820188
Fed Reg Date: 12/25/1998
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Status: Unutilized
Comment: 711 sq. ft., needs repair, most recent use—storage.

Texas

Building

Bldg. P–3824, Fort Sam Houston
Property #: 21199220398
Fed Reg Date: 12/25/1998
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 2232 sq. ft., 1-story concrete structure, within National Landmark Historic District, off-site removal use only.

Bldg. P–377, Fort Sam Houston
Property #: 21199330444
Fed Reg Date: 12/25/1998
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 74 sq. ft., 1-story brick, needs rehab, most recent use—scale house, located in National Historic District, off-site use only.

Bldg. T–5901
Property #: 21199330486
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 742 sq. ft., 1-story wood frame, most recent use—admin., off-site use only.

Bldg. 4480, Fort Hood
Property #: 21199410322
Fed Reg Date: 12/25/1998
Fort Hood Co: Bell TX 76544–
Status: Unutilized
Comment: 2160 sq. ft., 1-story, most recent use—storage, off-site use only.

Bldg. P–452
Property #: 21199440449
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Excess
Comment: 600 sq. ft., 1 story stucco frame, lead paint, off-site removal only, most recent use—bath house.

Bldg. P–6615
Property #: 21199440454
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Excess
Comment: 400 sq. ft., 1 story concrete frame, off-site removal only, most recent use—detached garage.

Bldg. 4201, Fort Hood
Property #: 21199520201
Fed Reg Date: 12/25/1998
Ft. Hood Co: Bell TX 76544–
Status: Unutilized
Comment: 9000 sq. ft., 1-story, off-site use only.

Bldg. 4202, Fort Hood
Property #: 21199520202
Fed Reg Date: 12/25/1998
Ft. Hood Co: Bell TX 76544–
Status: Unutilized
Comment: 5400 sq. ft., 1-story, most recent use—storage, off-site use only.

Bldg. P–1030
Property #: 21199520203
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Excess
Comment: 8212 sq. ft., 1-story most recent use—storage, presence of asbestos & lead base paint, located in Historic District, off-site use only.

Bldg. P–197
Property #: 21199640220
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 13819 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. T–230
Property #: 21199640221
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 18102 sq. ft., presence of asbestos/lead paint, most recent use—printing plant and shop, off-site use only.

Bldg. P–606B
Property #: 21199640223
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, off-site use only.

Bldg. P–607
Property #: 21199640224
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 12610 sq. ft., presence of asbestos/lead paint, most recent use—admin/classroom, off-site use only.

Bldg. P–608
Property #: 21199640225
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 12676 sq. ft., presence of asbestos/lead paint, most recent use—admin/classroom, off-site use only.

Bldg. P–608A
Property #: 21199640226
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 2914 sq. ft., presence of asbestos/lead paint, most recent use—admin/classroom, off-site use only.

Bldg. P–1000
Property #: 21199640227
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 226374 sq. ft., presence of asbestos/lead paint, historic property, most recent use—hospital/medical center.

Bldg. P–2270
Property #: 21199640230
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 14622 sq. ft., 2-story, historic bldg., presence of asbestos/lead paint, most recent use—auditorium.

Bldg. S–3898
Property #: 21199640235
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 4200 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only.

Bldg. S–3899
Property #: 21199640236
Fed Reg Date: 12/25/1998

Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 4200 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only.

Bldg. P–4190
Property #: 21199640237
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 88067 sq. ft., historic bldg., presence of asbestos/lead paint, most recent use—admin/warehouse.

Bldg. P–5126
Property #: 21199640240
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 189 sq. ft., off-site use only.

Bldg. P–6201
Property #: 21199640241
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 3003 sq. ft., presence of asbestos/lead paint, most recent use—officers family quarters, off-site use only.

Bldg. P–6202
Property #: 21199640242
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1479 sq. ft., presence of lead paint, most recent use—officers family quarters, off-site use only.

Bldg. P–6203
Property #: 21199640243
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1381 sq. ft., presence of lead paint, most recent use—military family quarters, off-site use only.

Bldg. P–6204
Property #: 21199640244
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1454 sq. ft., presence of asbestos/lead paint, most recent use—military family quarters, off-site use only.

Bldg. 7137, Fort Bliss
Property #: 21199640564
Fed Reg Date: 12/25/1998
El Paso Co: El Paso TX 79916–
Status: Unutilized
Comment: 35,736 sq. ft., 3-story, most recent use—housing, off-site use only.

Building 4630
Property #: 21199710088
Fed Reg Date: 12/25/1998
Fort Hood
Foot Hood Co: Bell TX 76544–
Status: Unutilized
Comment: 21,833 sq. ft., most recent use—Admin., off-site use only.

Bldg. P–4224
Property #: 21199720213
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Excess
Comment: 293 sq. ft., concrete, possible lead based paint, off-site use only.

Bldg. T–330
Property #: 21199730315
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 59,149 sq. ft., presence of asbestos/lead paint, historical category, most recent use—laundry, off-site use only.

Bldgs. P–605A & P–606A
Property #: 21199730316
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 2418 sq. ft., poor condition, presence of asbestos/lead paint, historical category, most recent use—indoor firing range, off-site use only.

Bldg. S–1150
Property #: 21199730317
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 8629 sq. ft., presence asbestos/lead paint, most recent use—instruction bldg., off-site use only.

Bldgs. S–1440—S–1446, S–1
Property #: 21199730318
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 4200 sq. ft., presence of lead, most recent use—instruction bldgs., off-site use only.

Army

Texas

Building

4 Bldgs.
Property #: 21199730319
Fed Reg Date: 12/25/1998
Fort Sam Houston
#S–1447, S–1449, S–1450, S–1451
Sam Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 4200 sq. ft., presence of asbestos/lead paint, most recent use—instruction bldgs., off-site use only.

Bldg. P–3500
Property #: 21199730320
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 13,921 sq. ft., poor condition, presence of asbestos/lead paint, most recent use—support of firing range, off-site use only.

Bldg. T–3551
Property #: 21199730321
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 992 sq. ft., presence of asbestos/lead paint, most recent use—maint. shop, off-site use only.

Bldg. T–3552
Property #: 21199730322
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 992 sq. ft., poor condition, presence of asbestos/lead paint, most recent use—storage shed, off-site use only.

Bldg. T–3553
Property #: 21199730323
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 992 sq. ft., poor condition, presence of asbestos/lead paint, most recent use—storage shed, off-site use only.

Bldg. T–3554
Property #: 21199730324
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 18803 sq. ft., poor condition, presence of lead paint, most recent use—stable, off-site use only.

Bldg. T–3556
Property #: 21199730325
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1300 sq. ft., poor condition, presence of lead paint, most recent use—stable, off-site use only.

Bldg. T–3557
Property #: 21199730326
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 992 sq. ft., poor condition, presence of asbestos/lead paint, most recent use—stable, off-site use only.

Bldg. P–4115
Property #: 21199730327
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 529 sq. ft., presence of asbestos/lead paint historic bldg., most recent use—admin., off-site use only.

Bldg. 4205
Property #: 21199730328
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 24,573 sq. ft., presence of asbestos/lead paint, most recent use—warehouse, off-site use only.

Bldg. T–5112
Property #: 21199730329
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 3663 sq. ft., presence of asbestos/lead paint, historical category, most recent use—post exchange, off-site use only.

Bldg. T–5113
Property #: 21199730330
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 2550 sq. ft., presence of asbestos/lead paint, historical bldg. most recent use—medical clinic, off-site use only.

Bldg. T–5122
Property #: 21199730331
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 3602 sq. ft., presence of asbestos/lead paint, historical category, most recent use—instruction bldg., off-site use only.

Bldg. T–5903
Property #: 21199730332
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 5200 sq. ft., presence of asbestos/lead paint, historical category, most recent use—admin., off-site use only.

Bldg. T–5907
Property #: 21199730333
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 570 sq. ft., presence of asbestos/lead paint, historical category, most recent use—admin., off-site use only.

Bldg. T–6284
Property #: 21199730335
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 120 sq. ft., presence of lead paint, most recent use—pump station, off-site use only.

Bldg. T–5906
Property #: 21199730420
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 570 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. P–1382
Property #: 21199810365
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 30,082 sq. ft., presence of asbestos/lead paint, most recent use—housing, off-site use only.

Bldg. P–2013
Property #: 21199810366
Fed Reg Date: 12/25/98
Ft Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 10,990 sq. ft., historical property, presence of asbestos/lead paint, most recent use—instruction, off-site use only.

Bldg. P–2014
Property #: 21199810367
Fed Reg Date: 12/25/98
Ft Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 10,990 sq. ft., historical property, presence of asbestos/lead paint, most recent use—instruction, off-site use only.

Bldg. P–2015
Property #: 21199810368
Fed Reg Date: 12/25/98
Ft Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 11,333 sq. ft., historical property, presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. P–2016
Property #: 21199810369
Fed Reg Date: 12/25/98
Ft Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 11,517 sq. ft., historical property, presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. P–2017
Property #: 21199810370
Fed Reg Date: 12/25/98
Ft Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 10,990 sq. ft., historical property, presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. S–3897
Property #: 21199810371
Fed Reg Date: 12/25/98
Ft Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 4,200 sq. ft., presence of asbestos/lead paint, most recent use—instruction, off-site use only.

Bldg. P–1026
Property #: 21199830346
Fed Reg Date: 12/25/98
Ft Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 14,067 sq. ft., fair, hazard abatement required, most recent use—lab/auditorium, historic significance.

Bldg. S–1155
Property #: 21199830347
Fed Reg Date: 12/25/98
Ft Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 2100 sq. ft., good, hazard abatement required, most recent use—instruction bldg., off-site use only.

Bldg. P–2376
Property #: 21199830348
Fed Reg Date: 12/25/98
Ft Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 368,132 sq. ft., fair, hazard abatement required, most recent use—hospital, historical significance.

Bldg. S–3896
Property #: 21199830349
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 4200 sq. ft., fair, hazard abatement required, most recent use—training, off-site use only.

Bldg. T–5123
Property #: 21199830350
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 2596 sq. ft., fair, hazard abatement required, most recent use—instruction, off-site use only, historical significance.

Bldg. P–6150
Property #: 21199830351
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 48 sq. ft., fair, hazard abatement required, most recent use—pumphouse, off-site use only.

Bldg. P–6218
Property #: 21199830352
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 216 sq. ft., fair, hazard abatement required, most recent use—pumping station, off-site use only.

Bldgs. P–6331, P–6335, P–64
Property #: 21199830353
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 36 sq. ft., fair, hazard abatement required, most recent use—pumping station, off-site use only.

Bldg. P–8000
Property #: 21199830354
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1766 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

9 Bldgs.
Property #: 21199830355
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8001, P8008, 8014, 8027, 8033, 8035, 8127, 8229, 88265
Status: Unutilized
Comment: 2456 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

11 Bldgs.
Property #: 21199830356
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #8003, P8011, 8012, 8019, 8043, 8202, 8204, 8216. 8235, 8241, 8261
Status: Unutilized
Comment: 2358 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldgs. P–8003C, P–8220C
Property #: 21199830357

Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1174 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only.

Bldg. P–8004
Property #: 21199830358
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 2243 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

7 Bldgs.
Property #: 21199830359
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8005, 8101, 8107, 8141, 8143, 8146, 8150
Status: Unutilized
Comment: 1804 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

16 Bldgs.
Property #: 21199830360
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8006, 8007, 8010, 8013, 8015, 8017, 8020, 8029, 8103, 8105, 8201, 8203, 8208, 8218, 8225, 8234
Status: Unutilized
Comment: 1703 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

7 Bldgs.
Property #: 21199830361
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8009, 8024, 8207, 8214, 8217, 8226, 8256
Status: Unutilized
Comment: 2253 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

4 Bldgs.
Property #: 21199830362
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8009C, 8248C, 8256C
Status: Unutilized
Comment: 681 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only.

3 Bldgs.
Property #: 21199830363
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8012C, 8039C, 8224C
Status: Unutilized
Comment: 1185 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only.

Bldg. P8016
Property #: 21199830364
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 2347 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

8 Bldgs.
Property #: 21199830365
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8021, 8211, 8244, 8270, 8213, 8223, 8243, 8266
Status: Unutilized
Comment: 249 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldg. P–8022
Property #: 21199830366
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1849 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

5 Bldgs.
Property #: 21199830367
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #8022C, 8023C, 8106C, 8127C, 8206C
Status: Unutilized
Comment: 513 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only.

7 Bldgs.
Property #: 21199830368
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #8023, 8039, 8139, 8209, 8220, 8253, 8254
Status: Unutilized
Comment: 2485 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldgs. P8026, P8028
Property #: 21199830369
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: approx. 1850 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

3 Bldgs.
Property #: 21199830370
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8028C, P8143C, P8150C
Status: Unutilized
Comment: 838 sq. ft., fair, harzard abatement required, most recent use—detached garage, off-site use only.

5 Bldgs.
Property #: 21199830371
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8030, P8031, 8104, 8032, 8034
Status: Unutilized
Comment: various sq. ft. fair, hazard abatement required, most recent use—housing, off-site use only.

3 Bldgs.
Property #: 21199830372
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8035C, P8104C, 8236C
Status: Unutilized
Comment: 1017 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only.

3 Bldgs.
Property #: 21199830373
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8036, P8038, 8040
Status: Unutilized
Comment: approx. 2300 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

7 Bldgs.
Property #: 21199830374
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8041, P8042, 8231, 8236, 8237, 8258, 8262
Status: Unutilized
Comment: 2335 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

3 Bldgs.
Property #: 21199830375
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8102, 8106, 8108
Status: Unutilized
Comment: approx. 2700 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldgs. P8109, P8137
Property #: 21199830376
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1540 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

4 Bldgs.
Property #: 21199830377
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8110, 8227, 8111, 8229
Status: Unutilized
Comment: 1537 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldgs. P8112, P8228
Property #: 21199830378
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1807 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

5 Bldgs.
Property #: 21199830379
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #8113, 8162, 8114, 8152, 8115

Status: Unutilized
Comment: approx. 1500 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

3 Bldgs.
Property #: 21199830380
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: P8116, 8151, 8158
Status: Unutilized
Comment: 1691 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldg. P8117
Property #: 21199830381
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1581 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

8 Bldgs.
Property #: 21199830382
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8118, 8121, 8125, 8153, 8119, 8120, 8124, 8168
Status: Unutilized
Comment: various sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldgs. P8122, P8123
Property #: 21199830383
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: approx. 1400 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldg. P8126
Property #: 21199830384
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1331 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldg. P8128
Property #: 21199830385
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1804 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

8 Bldgs.
Property #: 21199830386
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: P8131C, 8139C, 8203C, 8211C, 8231C, 8243C, 8249C, 8261C
Status: Unutilized
Comment: 849 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only.

Bldgs. P8133, P8134
Property #: 21199830387
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: Approx. 2000 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldgs. P8135, P8136
Property #: 21199830388
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: Approx. 1500 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

4 Bldgs.
Property #: 21199830389
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8144, 8267, 8148, 8149
Status: Unutilized
Comment: Approx. 2200 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

6 Bldgs.
Property #: 21199830390
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8154, 8155, 8159, 8163, 8167, 8156
Status: Unutilized
Comment: Approx. 1400 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

6 Bldgs.
Property #: 21199830391
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #8157, 8160, 8164, 8161, 8166, 8170
Status: Unutilized
Comment: approx. 1500 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldg. P8171
Property #: 21199830392
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1289 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldg. P8172
Property #: 21199830393
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1597 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldgs. P8173, P8174
Property #: 21199830394
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: approx. 2200 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldg. P8174C
Property #: 21199830395
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 670 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only.

Bldg. P8175
Property #: 21199830396
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 2220 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldg. P8200
Property #: 21199830397
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 892 sq. ft., fair, hazard abatement required, most recent use—officers quarters, off-site use only.

Bldg. P8200C
Property #: 21199830398
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 924 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only.

Bldg. P8205
Property #: 21199830399
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1745 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

4 Bldgs.
Property #: 21199830400
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #8206, 8215, 8232, 8233
Status: Unutilized
Comment: approx. 2400 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldg. P8245
Property #: 21199830401
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 2876 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

4 Bldgs.
Property #: 21199830402
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8246, 8248, 8250, 8259
Status: Unutilized
Comment: approx. 2300 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldgs. P8262C, 8271C

Property #: 21199830403
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1006 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only.

Bldg. P8269
Property #: 21199830404
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 2396 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

20 Bldgs.
Property #: 21199830405
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8271, 8002, 8018, 8025, 8037, 8100, 8130, 8132, 8138, 8140, 8142, 8145, 8147, 8210, 8212, 8221, 8242, 8247, 8264, 8257
Status: Unutilized
Comment: 2777 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only.

Bldg. P–1374
Property #: 21199840169
Fed Reg Date: 11/20/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 111,448 sq. ft., presence of asbestos/lead paint, hazard abatement responsibility, most recent use—barracks, off-site use only.

Bldg. P–1980
Property #: 21199840170
Fed Reg Date: 11/20/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 2989 sq. ft., presence of asbestos/lead paint hazard abatement responsibility, most recent use—radio system station, off-site use only.

Bldg. P–1981
Property #: 21199840171
Fed Reg Date: 11/20/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 200 sq. ft., presence of asbestos/lead paint hazard abatement responsibility, most recent use—generator plant, off-site use only.

Bldg. P–2396
Property #: 21199840172
Fed Reg Date: 11/20/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1080 sq. ft., presence of asbestos, hazard abatement responsibility, most recent use—generator plant, off-site use only.

Bldg. P–4226
Property #: 21199840173
Fed Reg Date: 11/20/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 1809 sq. ft., presence of lead paint, hazard abatement responsibility, most recent use—storage, off-site use only.

Bldg. P–5123
Property #: 21199840174
Fed Reg Date: 11/20/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 2596 sq. ft., presence of asbestos/lead paint, hazard abatement responsibility, most recent use—storage, off-site use only.

Bldg. 2840
Property #: 21199840175
Fed Reg Date: 11/20/1998
Fort Hood
Ft. Hood TX 76544–
Status: Unutilized
Comment: 2250 sq. ft., most recent use—admin., off-site use only.

Bldg. 2841
Property #: 21199840176
Fed Reg Date: 11/20/1998
Fort Hood
Ft. Hood TX 76544–
Status: Unutilized
Comment: 2220 sq. ft., most recent use—storage, off-site use only.

Bldg. 2842
Property #: 21199840177
Fed Reg Date: 11/20/1998
Fort Hood
Ft. Hood TX 76544–
Status: Unutilized
Comment: 2650 sq. ft., most recent use—admin., off-site use only.

Bldg. 2843
Property #: 21199840178
Fed Reg Date: 11/20/1998
Fort Hood
Ft. Hood TX 76544–
Status: Unutilized
Comment: 8043 sq. ft., most recent use—admin., off-site use only.

Bldg. 2844
Property #: 21199840179
Fed Reg Date: 11/20/1998
Fort Hood
Ft. Hood TX 76544–
Status: Unutilized
Comment: 8043 sq. ft., most recent use—admin., off-site use only.

Bldg. 2845
Property #: 21199840180
Fed Reg Date: 11/20/1998
Fort Hood
Ft. Hood TX 76544–
Status: Unutilized
Comment: 8043 sq. ft., most recent use—admin., off-site use only.

Bldg. 2846
Property #: 21199840181
Fed Reg Date: 11/20/1998
Fort Hood
Ft. Hood TX 76544–
Status: Unutilized
Comment: 8043 sq. ft., most recent use—admin., off-site use only.

Land

Old Camp Bullis Road
Property #: 21199420461
Fed Reg Date: 12/25/1998
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Status: Unutilized
Comment: 7.16 acres, rural gravel road.

Castner Range
Property #: 21199610788
Fed Reg Date: 12/25/1998
Fort Bliss
El Paso Co: El Paso TX 79916–
Status: Unutilized
Comment: 56.81 acres, portion in floodway, most recent use—recreation picnic park.

Army

Virginia

Building

Bldg. T–192
Property #: 21199830416
Fed Reg Date: 12/25/1998
Fort Monroe
Ft. Monroe VA 23651–
Status: Unutilized
Comment: 2804 sq. ft., presence of asbestos/lead paint, most recent use—hobby shop, off-site use only.

Bldg. 206
Property #: 21199830417
Fed Reg Date: 12/25/1998
Fort Monroe
Ft. Monroe VA 23651–
Status: Unutilized
Comment: 9521 sq. ft., presence of asbestos, most recent use—storage, off-site use only.

Washington

Building

13 Bldgs., Fort Lewis
Property #: 21199630199
Fed Reg Date: 12/25/1998
AO402, CO723, CO726, CO727, CO90
CO907, CO922, CO923, CO926, CO92
Ft. Lewis Co: Pierce WA 98433-9500
Status: Unutilized
Comment: 2360 sq. ft., possible asbestos/lead paint, most recent use—barracks, off-site use only.

7 Bldgs., Fort Lewis
Property #: 21199630200
Fed Reg Date: 12/25/1998
AO438, AO439, CO901, CO910, CO91
Ft. Lewis Co: Pierce WA 98433-9500
Status: Unutilized
Comment: 1144 sq. ft., possible asbestos/lead paint, most recent use—dayroom bldgs., off-site use only.

Bldg. AO608, Fort Lewis
Property #: 21199630201
Fed Reg Date: 12/25/1998
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comment: 2285 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—dining, off-site use only.

6 Bldgs. Fort Lewis
Property #: 21199630204
Fed Reg Date: 12/25/1998
CO908, CO728, CO921, CO928, C100
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comment: 2207 sq. ft., possible asbestos/lead paint, most recent use—dining, off-site use only.

Bldg. CO909, Fort Lewis
Property #: 21199630205

Fed Reg Date: 12/25/1998
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comment: 1984 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. CO920, Fort Lewis
Property #: 21199630206
Fed Reg Date: 12/25/1998
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comment: 1984 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. C1249, Fort Lewis
Property #: 21199630207
Fed Reg Date: 12/25/1998
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comment: 992 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site only.

Bldg. 1164, Fort Lewis
Property #: 21199630213
Fed Reg Date: 12/25/1998
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comment: 230 sq. ft., possible asbestos/lead paint, most recent use—storehouse, off-site use only.

Bldg. 1307, Fort Lewis
Property #: 21199630216
Fed Reg Date: 12/25/1998
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comment: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 1309, Fort Lewis
Property #: 21199630217
Fed Reg Date: 12/25/1998
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comment: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 2167, Fort Lewis
Property #: 21199630218
Fed Reg Date: 12/25/1998
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comment: 288 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only.

Bldg. 4078, Fort Lewis
Property #: 21199630219
Fed Reg Date: 12/25/1998
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comment: 10200 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—warehouse, off-site use only.

Bldg. 9599, Fort Lewis
Property #: 21199630220
Fed Reg Date: 12/25/1998
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comment: 12366 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only.

Bldg. A1404, Fort Lewis
Property #: 21199640570
Fed Reg Date: 12/25/1998
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 557 sq. ft., needs rehab, most recent use—storage, off-site use only.

Bldg. A1419, Fort Lewis
Property #: 21199640571
Fed Reg Date: 12/25/1998
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 1307 sq. ft., needs rehab, most recent use—storage, off-site use only.

Bldg. A1420, Fort Lewis
Property #: 21199640572
Fed Reg Date: 12/25/1998
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 5234 sq. ft., needs rehab, most recent use—vehicle maintenance shop, off-site use only.

11 Buildings
Property #: 21199710143
Fed Reg Date: 12/25/1998
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: #EO103–EO106, EO306, EO315–EO316, EO343–EO344, EO353–EO354
Status: Unutilized
Comment: 2360 sq. ft., possible asbestos/lead paint, most recent use—officer's quarters, off-site use only.

Bldgs. EO109, EO350
Property #: 21199710144
Fed Reg Date: 12/25/1998
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 1165 sq. ft., possible asbestos/lead paint, most recent use—dayroom, off-site use only.

Bldgs. EO120, EO321, EO338
Property #: 21199710145
Fed Reg Date: 12/25/1998
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 3810 sq. ft., possible asbestos/lead paint, most recent use—officer's quarters, off-site use only.

5 Bldgs.
Property #: 21199710146
Fed Reg Date: 12/25/1998
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: #EO127, EO136, EO302, EO204, EO330
Status: Unutilized
Comment: 2284 sq. ft., possible asbestos/lead paint, most recent use—offices, off-site use only.

Bldg. EO136
Property #: 21199710147
Fed Reg Date: 12/25/1998
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 3885 sq. ft., possible asbestos/lead paint, most recent use—officer's quarters, off-site use only.

Bldgs. EO158, EO303
Property #: 21199710148
Fed Reg Date: 12/25/1998
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 1675 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. EO202
Property #: 21199710149
Fed Reg Date: 12/25/1998
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 992 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. EO312
Property #: 21199710150
Fed Reg Date: 12/25/1998
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 3885 sq. ft., possible asbestos/lead paint, most recent use—officer's quarters, off-site use only.

Bldg. EO322
Property #: 21199710151
Fed Reg Date: 12/25/1998
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 2250 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. EO325
Property #: 21199710152
Fed Reg Date: 12/25/1998
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 3336 sq. ft., possible asbestos/lead paint, most recent use—officer's quarters, off-site use only.

Bldg. EO329
Property #: 21199710153
Fed Reg Date: 12/25/1998
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 1843 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. EO334
Property #: 21199710154
Fed Reg Date: 12/25/1998
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 3779 sq. ft., possible asbestos/lead paint, most recent use—recreation, off-site use only.

Bldg. EO335
Property #: 21199710155
Fed Reg Date: 12/25/1998
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 2207 sq. ft., possible asbestos/lead paint, most recent use—dining facility, off-site use only.

Bldg. EO347
Property #: 21199710156
Fed Reg Date: 12/25/1998
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 1800 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldgs. EO349, EO110
Property #: 21199710157
Fed Reg Date: 12/25/1998
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 1296 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

4 Bldgs.
Property #: 21199710158
Fed Reg Date: 12/25/1998
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: #EO351, EO308, EO207, EO108
Status: Unutilized
Comment: 1144 sq. ft., possible asbestos/lead paint, most recent use—dayroom, off-site use only.

Bldgs. EO352, EO307
Property #: 21199710159
Fed Reg Date: 12/25/1998
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 992 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. EO355
Property #: 21199710160
Fed Reg Date: 12/25/1998
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 2360 sq. ft., possible asbestos/lead paint, most recent use—training facility, off-site use only.

Bldg. B1008, Fort Lewis
Property #: 21199720216
Fed Reg Date: 12/25/1998
Ft Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 7387 sq. ft., 2-story, needs rehab, possible asbestos/lead paint, most recent use—medical clinic, off-site use only.

Bldgs. B1011–B1012, Fort Lewis
Property #: 21199720217
Fed Reg Date: 12/25/1998
Ft Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 992 sq. ft., and 1144 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—office, off-site use only.

Bldgs. CO509, CO709, CO720
Property #: 21199810372
Fed Reg Date: 12/25/1998
Fort Lewis
Ft Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 1984 sq. ft., possible asbestos/lead paint, needs rehab, most recent use—storage, off-site use only.

4 Bldgs.
Property #: 21199810373
Fed Reg Date: 12/25/1998
Fort Lewis
CO511, CO710, CO711, CO719
Ft Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 1,144 sq. ft., possible asbestos/lead paint, needs rehab, most recent use—dayrooms, off-site use only.

11 Bldgs.
Property #: 21199810374
Fed Reg Date: 12/25/1998
Fort Lewis
Ft Lewis Co: Pierce WA 98433–
Location: CO528, CO701, CO708, CO721, CO526, CO527, CO702, CO703, CO706, CO707, CO722
Status: Unutilized
Comment: 2207 sq. ft., possible asbestos/lead paint, most recent use—dining, off-site use only.

Bldg. B1021
Property #: 21199830418
Fed Reg Date: 12/25/1998
Fort Lewis
Ft Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 3724 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—carport, off-site use only.

Bldg. 5162
Property #: 21199830419
Fed Reg Date: 12/25/1998
Fort Lewis
Ft Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—office, off-site use only.

Bldg. A0101
Property #: 21199830420
Fed Reg Date: 12/25/1998
Fort Lewis
Ft Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 1675 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—store, off-site use only.

Bldg. A0105
Property #: 21199830421
Fed Reg Date: 12/25/1998
Fort Lewis
Ft Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 1843 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—carport, off-site use only.

Bldg. A0631
Property #: 21199830422
Fed Reg Date: 12/25/1998
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 2207 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—dayroom, off-site use only.

Bldg. B0216
Property #: 21199830423
Fed Reg Date: 12/25/1998
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 3108 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—veh. maint., off-site use only.

Bldg. B0218
Property #: 21199830424
Fed Reg Date: 12/25/1998
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 3108 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—veh. maint., off-site use only.

Bldg. C1316
Property #: 21199830425
Fed Reg Date: 12/25/1998
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 1675 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—office, off-site use only.

Bldg. C1246
Property #: 21199830426
Fed Reg Date: 12/25/1998
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 7670 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—office, off-site use only.

Bldg. B0813
Property #: 21199830427
Fed Reg Date: 12/25/1998
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 1144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—office, off-site use only.

Bldg. B0812
Property #: 21199830428
Fed Reg Date: 12/25/1998
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 1144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—dayroom, off-site use only.

Bldg. B0228
Property #: 21199830429
Fed Reg Date: 12/25/1998
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 2739 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. A0104
Property #: 21199830430
Fed Reg Date: 12/25/1998
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 2284 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—dispensary, off-site use only.

Bldg. C0409
Property #: 21199830431
Fed Reg Date: 12/25/1998
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 1948 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 9575
Property #: 21199830432
Fed Reg Date: 12/25/1998
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 17,217 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—veh. maint., off-site use only.

Bldg. 5224
Property #: 21199830433
Fed Reg Date: 12/25/1998

Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—educ. fac., off-site use only.

Bldg. 9575
Property #: 21199830434
Fed Reg Date: 12/25/1998
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 17,217 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—veh. maint., off-site use only.

Bldg. 9794
Property #: 21199830435
Fed Reg Date: 12/25/1998
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Status: Unutilized
Comment: 210 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—vet. fac., off-site use only.

Bldg. A0220
Property #: 21199840182
Fed Reg Date: 11/20/1998
Fort Lewis
Co: Pierce WA 98433–
Status: Unutilized
Comment: 2284 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—recreation, off-site use only.

Bldg. 4540
Property #: 21199840183
Fed Reg Date: 11/20/1998
Fort Lewis
Co: Pierce WA 98433–
Status: Unutilized
Comment: 1200 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—office, off-site use only.

Bldg. 4541
Property #: 21199840184
Fed Reg Date: 11/20/1998
Fort Lewis
Co: Pierce WA 98433–
Status: Unutilized
Comment: 880 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 4542
Property #: 21199840185
Fed Reg Date: 11/20/1998
Fort Lewis
Co: Pierce WA 98433–
Status: Unutilized
Comment: 112 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—heat plant, off-site use only.

Bldg. 4549
Property #: 21199840186
Fed Reg Date: 11/20/1998
Fort Lewis
Co: Pierce WA 98433–
Status: Unutilized
Comment: 26220 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—green house heat plant, off-site use only.

Bldg. 6118
Property #: 21199840187
Fed Reg Date: 11/20/1998
Fort Lewis
Co: Pierce WA 98433–
Status: Unutilized
Comment: 2263 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—classroom, off-site use only.

Bldg. 6191
Property #: 21199840188
Fed Reg Date: 11/20/1998
Fort Lewis
Co: Pierce WA 98433–
Status: Unutilized
Comment: 3663 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—post exchange, off-site use only.

COE

Arkansas

Land

Parcel 01
Property #: 31199010071
Fed Reg Date: 8/21/1998
DeGray Lake
Section 12
Arkadelphia Co: Clark AR 71923–9361
Status: Unutilized
Comment: 77.6 acres.

Parcel 02
Property #: 31199010072
Fed Reg Date: 8/21/1998
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Status: Unutilized
Comment: 198.5 acres.

Parcel 03
Property #: 31199010073
Fed Reg Date: 8/21/1998
DeGray Lake
Section 18
Arkadelphia Co: Clark AR 71923–9361
Status: Unutilized
Comment: 50.46 acres.

Parcel 04
Property #: 31199010074
Fed Reg Date: 8/21/1998
DeGray Lake
Section 24, 25, 30 and 31
Arkadelphia Co: Clark AR 71923–9361
Status: Unutilized
Comment: 236.37 acres.

Parcel 05
Property #: 31199010075
Fed Reg Date: 8/21/1998
DeGray Lake
Section 16
Arkadelphia Co: Clark AR 71923–9361
Status: Unutilized
Comment: 187.30 acres.

Parcel 06
Property #: 31199010076
Fed Reg Date: 8/21/1998
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Status: Unutilized
Comment: 13.0 acres.

Parcel 07
Property #: 31199010077
Fed Reg Date: 08/21/1998
DeGray Lake
Section 34
Arkadelphia Co: Hot Spring AR 71923–9361
Status: Unutilized
Comment: 0.27 acres.

Parcel 08
Property #: 31199010078
Fed Reg Date: 08/21/1998
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Status: Unutilized
Comment: 14.6 acres.

Parcel 09
Property #: 31199010079
Fed Reg Date: 08/21/1998
DeGray Lake
Section 12
Arkadelphia Co: Hot Spring AR 71923–9361
Status: Unutilized
Comment: 6.60 acres.

Parcel 10
Property #: 31199010080
Fed Reg Date: 08/21/1998
DeGray Lake
Section 12
Arkadelphia Co: Hot Spring AR 71923–9361
Status: Unutilized
Comment: 4.5 acres.

Parcel 11
Property #: 31199010081
Fed Reg Date: 08/21/1998
DeGray Lake
Section 19
Arkadelphia Co: Hot Spring AR 71923–9361
Status: Unutilized
Comment: 19.50 acres.

Lake Greeson
Property #: 31199010083
Fed Reg Date: 08/21/1998
Sections 7, 8 and 18
Murfreesboro Co: Pike AR 71958–9720
Status: Unutilized
Comment: 46 acres.

Iowa

Building

Tract 141
Property #: 31199610005
Fed Reg Date: 08/21/1998
Melos, Stanley, Camp Dodge
Johnston Co: Polk IA 50131–
Status: Excess
Comment: 1104 sq. ft., most recent use—storage, needs rehab, possible asbestos, off-site use only.

Kansas

Land

Parcel 1
Property #: 31199010064
Fed Reg Date: 08/21/1998
El Dorado Lake
Sections 13, 24, and 18
(See County) Co: Butler KS
Status: Unutilized
Comment: 61 acres; most recent use—recreation.

Kentucky

Building

Green River Lock & Dam #3
Property #: 31199010022
Fed Reg Date: 08/21/1998
Rochester Co: Butler KY 42273–
Location: SR 70 west from Morgantown, KY, approximately 7 miles to site.
Status: Unutilized
Comment: 980 sq. ft.; 2 story wood frame; two story residence; potential utilities; needs major rehab.

Kentucky River Lock and Dam

Property #: 31199010060
Fed Reg Date: 8/21/1998
Pleasureville Co: Henry KY 40057–
Location: SR 421 North from Frankfort, KY. to highway 561, right on 561 approximately 3 miles to site.
Status: Unutilized
Comment: 897 sq. ft.; 2 story wood frame; structural deficiencies.

Bldg. 1
Property #: 31199011628
Fed Reg Date: 8/21/1998
Kentucky River Lock and Dam
Carrolton Co: Carroll KY 41008–
Location: I–71 to Carrolton, KY exit, go east on SR #227 to Highway 320, then left for about 1.5 miles to site.
Status: Unutilized
Comment: 1530 sq. ft.; 2 story wood frame house; subject to periodic flooding; needs rehab.

Bldg. 2
Property #: 31199011629
Fed Reg Date: 8/21/1998
Kentucky River Lock and Dam
Carrolton Co: Carroll KY 41008–
Location: Take I–71 to Carrolton, KY exit, go east on #227 to highway 320, then left for about 1.5 miles to site.
Status: Unutilized
Comment: 1530 sq. ft.; 2 story wood frame house; subject to periodic flooding; needs rehab.

Utility Bldg, Nolin River L
Property #: 31199320002
Fed Reg Date: 8/21/1998
Moutardier Recreation Site
Co: Edmonson KY
Status: Unutilized
Comment: 541 sq. ft.; concrete block, off-site use only

Land

Tract 2625
Property #: 31199010025
Fed Reg Date: 8/21/1998
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg KY 42211–
Location: Adjoining the village of Rockcastle.
Status: Excess
Comment: 2.57 acres; rolling and wooded.

Tract 2709–10 and 2710–2
Property #: 31199010026
Fed Reg Date: 8/21/1998
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle.
Status: Excess
Comment: 2.00 acres; steep and wooded.

Tract 2708–1 and 2709–1
Property #: 31199010027
Fed Reg Date: 8/21/1998
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle.
Status: Excess
Comment: 3.59 acres; rolling and wooded; no utilities.

Tract 2800
Property #: 31199010028
Fed Reg Date: 8/21/1998
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 2½ miles in a southeasterly direction from the village of Rockcastle.
Status: Excess
Comment: 5.44 acres; steep and wooded.

Tract 2915
Property #: 31199010029
Fed Reg Date: 8/21/1998
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 6½ miles west of Cadiz.
Status: Excess
Comment: 5.76 acres; steep and wooded; no utilities.

Tract 2702
Property #: 31199010031
Fed Reg Date: 08/21/1998
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 1 mile in a southerly direction from the village of Rockcastle.
Status: Excess
Comment: 4.90 acres; wooded; no utilities.

Tract 4318
Property #: 31199010032
Fed Reg Date: 08/21/1998
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: Trigg Co. adjoining the city of Canton, KY. on the waters of Hopson Creek.
Status: Excess
Comment: 8.24 acres; steep and wooded.

Tract 4502
Property #: 31199010033
Fed Reg Date: 08/21/1998
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 3½ miles in a southerly direction from Canton, KY.
Status: Excess
Comment: 4.26 acres; steep and wooded.

Tract 4611
Property #: 31199010034
Fed Reg Date: 08/21/1998
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 5 miles south of Canton, KY.
Status: Excess
Comment: 10.51 acres; steep and wooded; no utilities.

Tract 4619
Property #: 31199010035
Fed Reg Date: 08/21/1998
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY.
Status: Excess
Comment: 2.02 acres; steep and wooded, no utilities.

Tract 4817
Property #: 31199010036
Fed Reg Date: 08/21/1998
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 6½ miles south of Canton, KY.
Status: Excess
Comment: 1.75 acres; wooded.

Tract 1217
Property #: 31199010042
Fed Reg Date: 08/21/1998
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: On the north side of the Illinois Central Railroad.
Status: Excess
Comment: 5.80 acres; steep and wooded.

Tract 1906
Property #: 31199010044
Fed Reg Date: 08/21/1998
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4 miles east of Eddyville, KY
Status: Excess
Comment: 25.86 acres; rolling steep and partially wooded; no utilities.

Tract 1907
Property #: 31199010045
Fed Reg Date: 08/21/1998
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038–
Location: On the waters of Pilfen Creek, 4 miles east of Eddyville, KY
Status: Excess
Comment: 8.71 acres; rolling steep and wooded; no utilities.

Tract 2001 #1
Property #: 31199010046
Fed Reg Date: 8/21/1998
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4½ miles east of Eddyville, KY.
Status: Excess
Comment: 47.42 acres; steep and wooded; no utilities.

Tract 2001 #2
Property #: 31199010047
Fed Reg Date: 8/21/1998
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4½ miles east of Eddyville, KY.
Status: Excess
Comment: 8.64 acres; steep and wooded; no utilities.

Tract 2005
Property #: 31199010048
Fed Reg Date: 8/21/1998
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 5½ miles east of Eddyville, KY.
Status: Excess
Comment: 4.62 acres; steep and wooded; no utilities.

Tract 2307
Property #: 31199010049
Fed Reg Date: 8/21/1998
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 7½ miles southeasterly of Eddyville, KY.
Status: Excess
Comment: 11.43 acres; steep; rolling and wooded; no utilities.

Tract 2403
Property #: 31199010050
Fed Reg Date: 8/21/1998
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 7 miles southeasterly of Eddyville, KY.
Status: Excess
Comment: 1.56 acres; steep and wooded; no utilities.

Tract 2504
Property #: 31199010051

Fed Reg Date: 8/21/1998
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 9 miles southeasterly of Eddyville, KY.
Status: Excess
Comment: 24.46 acres; steep and wooded; no utilities.

Tract 214
Property #: 31199010052
Fed Reg Date: 8/21/1998
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: South of the Illinois Central Railroad, 1 mile east of the Cumberland River.
Status: Excess
Comment: 5.5 acres; wooded; no utilities.

Tract 215
Property #: 31199010053
Fed Reg Date: 8/21/1998
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Status: Excess
Comment: 1.40 acres; wooded; no utilities.

Tract 241
Property #: 31199010054
Fed Reg Date: 8/21/1998
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Status: Excess
Comment: 1.26 acres; steep and wooded; no utilities.

Tracts 306, 311, 315 and 32
Property #: 31199010055
Fed Reg Date: 08/21/1998
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 2.5 miles southwest of Kuttawa, KY, on the waters of Cypress Creek.
Status: Excess
Comment: 38.77 acres; steep and wooded; no utilities.

Tracts 2305, 2306, and 2400
Property #: 31199010056
Fed Reg Date: 08/21/1998
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 6½ miles southeasterly of Eddyville, KY.
Status: Excess
Comment: 97.66 acres; steep rolling and wooded; no utilities.

Tract 500–2
Property #: 31199010057
Fed Reg Date: 08/21/1998
Barkley Lake, Kentucky and Tennessee
Kuttawa Co: Lyon KY 42055–
Location: Situated on the waters of Poplar Creek, approximately 1 mile southwest of Kuttawa, KY.
Status: Excess
Comment: 3.58 acres; hillside ridgeland and wooded; no facilities.

Tracts 5203 and 5204
Property #: 31199010058
Fed Reg Date: 08/21/1998
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212–
Location: Village of Linton, KY state highway 1254.
Status: Excess
Comment: 0.93 acres; rolling, partially wooded; no utilities.

Tract 5240
Property #: 31199010059
Fed Reg Date: 08/21/1998
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212–
Location: 1 mile northwest of Linton, KY.
Status: Excess
Comment: 2.26 acres; steep and wooded; no utilities.

Tract 4628
Property #: 31199011621
Fed Reg Date: 08/21/1998
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY.
Status: Excess
Comment: 3.71 acres; steep and wooded; subject to utility easements.

Tract 4619–B
Property #: 31199011622
Fed Reg Date: 08/21/1998
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY.
Status: Excess
Comment: 1.73 acres; steep and wooded; subject to utility easements.

Tract 2403–B
Property #: 31199011623
Fed Reg Date: 08/21/1998
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038–
Location: 7 miles southeasterly from Eddyville, KY.
Status: Unutilized
Comment: 0.70 acres; subject to utility easements.

Tract 241–B
Property #: 31199011624
Fed Reg Date: 08/21/1998
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: South of Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Status: Excess
Comment: 11.16 acres; steep and wooded; subject to utility easements.

Tracts 212 and 237
Property #: 31199011625
Fed Reg Date: 08/21/1998
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon, KY 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Status: Excess
Comment: 2.44 acres; steep and wooded; subject to utility easements.

Tract 215–B
Property #: 31199011626
Fed Reg Date: 08/21/1998
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon, KY 42045–
Location: 5 miles southwest of Kuttawa
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements.

Tract 233
Property #: 31199011627
Fed Reg Date: 08/21/1998
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon, KY 42045–
Location: 5 miles southwest of Kuttawa
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements.

Tract B—Markland Locks & Hwy 42, 3.5 miles downstream of Warsaw
Property #: 31199130002
Fed Reg Date: 08/21/1998
Warsaw Co: Gallatin, KY 41095–
Status: Unutilized
Comment: 10 acres, most recent use—recreational, possible periodic flooding.

Tract A—Markland Locks & Hwy 42, 3.5 miles downstream of Warsaw
Property #: 31199130003
Fed Reg Date: 08/21/1998
Warsaw Co: Gallatin, KY 41095–
Status: Unutilized
Comment: 8 acres, most recent use—recreational, possible periodic flooding.

Tract C—Markland Locks & Hwy 42, 3.5 miles downstream of Warsaw
Property #: 31199130005
Fed Reg Date: 08/21/1998
Warsaw Co: Gallatin, KY 41095–
Status: Unutilized
Comment: 4 acres, most recent use—recreational, possible periodic flooding.

Tract N–819
Property #: 31199140009
Fed Reg Date: 08/21/1998
Dale Hollow Lake & Dam Project
Illwill Creek, Hwy 90
Hobart Co: Clinton, KY 42601–
Status: Underutilized
Comment: 91 acres, most recent use—hunting, subject to existing easements.

Portion of Lock & Dam No. 1, Kentucky River
Property #: 31199320003
Fed Reg Date: 08/21/1998
Carrolton Co: Carroll, KY 41008–0305
Status: Unutilized
Comment: Approx. 3.5 acres (sloping), access monitored.

Portion of Lock & Dam No. 2, Kentucky River
Property #: 31199320004
Fed Reg Date: 08/21/1998
Lockport Co: Henry, KY 40036–9999
Status: Underutilized
Comment: Approx. 13.14 acres (sloping), access monitored.

Louisiana

Land

Wallace Lake Dam and Reserve
Property #: 31199011009
Fed Reg Date: 08/21/1998
Shreveport Co: Caddo LA 71103–
Status: Unutilized
Comment: 11 acres; wildlife/forestry; no utilities.

Bayou Bodcau Dam and Reserv
Property #: 31199011010
Fed Reg Date: 08/21/1998
Location: 35 miles Northeast of Shreveport, La.
Status: Unutilized
Comment: 203 acres; wildlife/forestry; no utilities.

Minnesota

Land

Parcel D
Property #: 31199011038
Fed Reg Date: 08/21/1998
Cross Lake Co: Crow Wing MN 56442–

Location: 3 miles from city of Cross Lake, between highways 6 and 371.
Status: Excess
Comment: 17 acres; no utilities.

Tract 92
Property #: 31199011040
Fed Reg Date: 08/21/1998
Sandy Lake
McGregor Co; Aitkins MN 55760–
Location: 4 miles west of highway 65, 15 miles from city of McGregor.
Status: Excess
Comment: 4 acres; no utilities.

Tract 98
Property #: 31199011041
Fed Reg Date: 08/21/1998
Leech Lake
Benedict Co: Hubbard MN 56641–
Location: 1 mile from city of Federal Dam, Mn.
Status: Excess
Comment: 7.3 acres; no utilities.

Mississippi

Land

Parcel 7
Property #: 31199011019
Fed Reg Date: 08/21/1998
Grenada Lake
Sections 22, 23, T24N
Grenada Co: Yalobusha MS 38901–0903
Status: Underutilized
Comment: 100 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 8
Property #: 31199011020
Fed Reg Date: 08/21/1998
Grenada Lake
Sections 20, T24N
Grenada Co: Yalobusha MS 38901–0903
Status: Underutilized
Comment: 30 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 9
Property #: 31199011021
Fed Reg Date: 08/21/1998
Grenada Lake
Sections 20, T24N R7E
Grenada Co: Yalobusha MS 38901–0903
Status: Underutilized
Comment: 23 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 10
Property #: 31199011022
Fed Reg Date: 08/21/1998
Grenada Lake
Sections 16, 17, 18 T24N R8E
Grenada Co: Calhoun MS 38901–0903
Status: Underutilized
Comment: 490 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 2
Property #: 31199011023
Fed Reg Date: 08/21/1998
Grenada Lake
Section 20 and T23N, R5E
Grenada Co: Grenada MS 38901–0903
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 3
Property #: 31199011034
Fed Reg Date: 08/21/1998
Grenada Lake
Section 4, T23N, R5E
Grenada Co: Yalobusha MS 38901–0903
Status: Underutilized
Comment: 120 acres; no utilities; most recent use—wildlife and forestry management; (13.5 acres/agriculture lease).

Parcel 4
Property #: 31199011025
Fed Reg Date: 08/21/1998
Grenada Lake
Section 2 and 3, T23N, R5E
Grenada Co: Yalobusha MS 38901–0903
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 5
Property #: 31199011026
Fed Reg Date: 08/21/1998
Grenada Lake
Section 7, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management; (14 acres/agriculture lease).

Parcel 6
Property #: 31199011027
Fed Reg Date: 08/21/1998
Grenada Lake
Section 9, T24N, R6E
Grenada Co: Yalobusha MS 38903–0903
Status: Underutilized
Comment: 80 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 11
Property #: 31199011028
Fed Reg Date: 08/21/1998
Grenada Lake
Section 20, T24N, R8E
Grenada Co: Calhoun MS 38901–0903
Status: Underutilized
Comment: 30 acres; no utilitites; most recent use—wildlife and forestry management.

Parcel 12
Property #: 31199011029
Fed Reg Date: 08/21/1998
Grenada Lake
Section 25, T24N, R7E
Grenada Co: Yalobusha MS 38390–0903
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 13
Property #: 31199011030
Fed Reg Date: 08/21/1998
Grenada Lake
Section 34, T24N, R7E
Grenada Co: Yalobusha MS 38903–0903
Status: Underutilized
Comment: 35 acres; no utilities; must recent use—wildlife and forestry management; (11 acres/agriculture lease).

Parcel 14
Property #: 31199011031
Fed Reg Date: 08/21/1998
Grenada Lake
Section 3, T23N, R6E
Grenada Co: Yalobusha MS 38901–0903
Status: Underutilized
Comment: 15 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 15
Property #: 31199011032
Fed Reg Date: 08/21/1998
Grenada Lake
Section 4, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Status: Underutilized
Comment: 40 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 16
Property #: 31199011033
Fed Reg Date: 08/21/1998
Grenada Lake
Section 9, T23N, R6E
Grenada Co: Yalobusha MS 38901–0903
Status: Underutilized
Comment: 70 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 17
Property #: 31199011034
Fed Reg Date: 08/21/1998
Grenada Lake
Section 17, T23N, R7E
Grenada Co: Grenada MS 38901–0903
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 18
Property #: 31199011035
Fed Reg Date: 08/21/1998
Grenada Lake
Section 22, T23N, R7E
Grenada Co: Grenada MS 38901–0903
Status: Underutilized
Comment: 10 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 19
Property #: 31199011036
Fed Reg Date: 08/21/1998
Grenada Lake
Section 9, T22N, R7E
Grenada Co: Grenada MS 38901–0903
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management.

Missouri

Building

Riverlands Ofc. Bldg.
Property #: 31199730001
Fed Reg Date: 08/21/1998
Melvin Price Locks & Dam
Access Road
West Alton Co: St. Charles MO 63386–
Status: Excess
Comment: 5000 sq. ft., steel, most recent use—office, flood damaged, off-site use only.

Project Residence
Property #: 31199830001
Fed Reg Date: 08/21/1998
Long Branch Lake
30186 Visitor Center Road
Macon MO 63552–
Status: Excess
Comment: 1440 sq. ft., off-site use only.

Proj. Residence #1
Property #: 31199840001
Fed Reg Date: 12/27/1998
Stockton Lake
Stockton Co: Cedar MO 65785–
Status: Excess
Comment: 1260 sq. ft. w/attached garage, most recent use—residence, off-site use only.

Proj. Residence #2

Property #: 31199840002
Fed Reg Date: 11/27/1998
Stockton Lake
Stockton Co: Cedar MO 65785–
Status: Excess
Comment: 1260 sq. ft. w/attached garage, most recent use—residence, off-site use only.

Land

Harry S Truman Dam & Reserv
Property #: 31199030014
Fed Reg Date: 08/21/1998
Warsaw Co: Benton MO 65355–
Location: Triangular shaped parcel southwest of access road ''B'', part of Bledsoe Ferry Park Track 150.
Status: Underutilized
Comment: 1.5 acres; potential utilities.

Ohio

Building

Barker Historic House
Property #: 31199120018
Fed Reg Date: 08/21/1998
Willow Island Locks and Dam
Newport Co: Washington OH 45768–9801
Location: Located at lock site, downstream of lock and dam structure
Status: Underutilized
Comment: 1600 sq. ft. bldg. with 1/2 acre of land, 2 story brick frame, needs rehab, on Natl Register of Historic Places, no utilities, off-site use only.

Dwelling No. 2
Property #: 31199810005
Fed Reg Date: 08/21/1998
Delaware Lake, Highway 23
North
Delaware OH 43015–
Status: Excess
Comment: 2-story brick 2/basement, most recent use–residential, presence of asbestos/lead paint, off-site only.

Land

Hannibal Locks and Dam
Property #: 31199010015
Fed Reg Date: 08/21/1998
Ohio River
P.O. Box 8
Hannibal Co: Monroe OH 43931–0008
Location: Adjacent to the new Martinsville Bridge.
Status: Underutilized
Comment: 22 acres; river bank.

Oklahoma

Building

Water Treatment Plant
Property #: 31199630001
Fed Reg Date: 08/21/1998
Belle Starr, Eufaula Lake
Eufaula Co: McIntosh OH 74432–
Status: Excess
Comment: 16′x16′, metal, off-site use only.

Water Treatment Plant
Property #: 31199630002
Fed Reg Date: 08/21/1998
Gentry Creek, Eufaula Lake
Eufaula Co: McIntosh OK 74432–
Status: Excess
Comment: 12′x16′, metal, off-site use only.

Land

Pine Creek Lake
Property #: 31199010923
Fed Reg Date: 08/21/1998
Section 27
(See County) Co.: McCurtain OK
Status: Underutilized
Comment: 3 acres; no utilities; subject to right of way for Oklahoma State Highway 3.

Pennsylvania

Building

Mahoning Creek Reservoir
Property #: 31199210008
Fed Reg Date: 08/21/1998
New Bethlehem Co: Armstrong PA 16242–
Status: Unutilized
Comment: 1015 sq. ft., 2 story brick residence, off-site use only.

One Unit/Residence
Property #: 31199430011
Fed Reg Date: 08/21/1998
Conemaugh River Lake, RD #1,
Box 702
Saltburg Co: Indiana PA 15681–
Status: Unutilized
Comment: 2642 sq. ft. 1-story, 1-unit of duplex, fair condition, access restrictions.

Dwelling
Property #: 31199620008
Fed Reg Date: 08/21/1998
Lock & Dam 6, Allegheny River, 1260 River Rd.
Freeport Co: Armstrong PA 16229–2023
Status: Unutilized
Comment: 2652 sq. ft., 3-story brick house, in close proximity to Lock and Dam, available for interim use for nonresidential purposes.

Govt. Dwelling
Property #: 31199640009
Fed Reg Date: 08/21/1998
Youghiogheny River Lake
Confluence Co: Fayette PA 15424–9103
Status: Unutilized
Comment: 1421 sq. ft., 2-story brick w/ basement, most recent use—residential.

Dwelling
Property #: 31199710009
Fed Reg Date: 08/21/1998
Lock & Dam 4, Allegheny River
Natrona Co: Allegheny PA 15065–2609
Status: Unutilized
Comment: 1664 sq. ft., 3-story brick residence, needs repair, off-site use only.

Dwelling #: 1
Property #: 31199740002
Fed Reg Date: 08/21/1998
Crooked Creek Lake
Ford City Co: Armstrong PA 16226–8815
Status: Excess
Comment: 2030 sq. ft., most recent use—residential, good condition, off-site use only.

Dwelling #2
Property #: 31199740003
Fed Reg Date: 08/21/1998
Crooked Creek Lake
Ford City Co: Armstrong PA 16226–8815
Status: Excess
Comment: 3045 sq. ft., most recent use—residential, good condition, off-site use only.

Dwelling #3
Property #: 31199740004
Fed Reg Date: 08/21/1998
Crooked Creek Lake
Ford City Co: Armstrong PA 16226–8815
Status: Excess
Comment: 1846 sq. ft., most recent use—office, good condition, off-site use only.

Govt. Dwelling
Property #: 31199740005
Fed Reg Date: 08/21/1998
East Branch Lake
Wilcox Co: Elk PA 15870–9709
Status: Underutilized
Comment: approx. 5299 sq. ft., 1-story, most recent use—residence, off-site use only.

Dwelling #1
Property #: 31199740006
Fed Reg Date: 08/21/1998
Loyalhanna Lake
Saltsburg Co: Westmoreland PA 15681–9302
Status: Excess
Comment: 1996 sq. ft., most recent use—residential, good condition, off-site use only.

Dwelling #2
Property #: 31199740007
Fed Reg Date: 08/21/1998
Loyalhanna Lake
Saltsburg Co: Westmoreland PA 15681–9302
Status: Excess
Comment: 1996 sq. ft., most recent use—residential, good condition, off-site use only.

Dwelling #1
Property #: 31199740008
Fed Reg Date: 08/21/1998
Woodcock Creek Lake
Saegertown Co: Crawford PA 16433–0629
Status: Excess
Comment: 2106 sq. ft., most recent use—residential, good condition, off-site use only.

Dwelling #2
Property #: 31199740009
Fed Reg Date: 08/21/1998
Lock & Dam 6, 1260 River Road
Freeport Co: Armstrong PA 16229–2023
Status: Excess
Comment: 2652 sq. ft., most recent use—residential, good condition, off-site use only.

Dwelling #2
Property #: 31199830003
Fed Reg Date: 11/27/1998
Youghiogheny River Lake
Confluence Co: Fayette PA 15424–9103
Status: Excess
Comment: 1421 sq. ft., 2-story + basement, most recent use—residential.

Land

Mahoning Creek Lake
Property #: 31199020018
Fed Reg Date: 08/21/1998
New Bethlehem Co: Armstrong PA 16242–9603
Location: Route 28 north to Belknap, Road #4
Status: Excess
Comment: 2.58 acres; steep and densely wooded.

Tracts 610, 611, 612
Property #: 31199011001
Fed Reg Date: 08/21/1998
Shenango River Lake
Sharpsville Co: Mercer PA 16150–

Location: I–79 North, I–80 West, Exit Sharon. R18 North 4 miles, left on R518, right on Mercer Avenue
Status: Excess
Comment: 24.09 acres; subject to flowage easement.

Tracts L24, L26
Property #: 31199011011
Fed Reg Date: 08/21/1998
Crooked Creek Lake
Co: Armstrong PA 03051–
Location: Left bank—55 miles downstream of dam
Status: Unutilized
Comment: 7.59 acres; potential for utilities.

Portion of Tract L–21A
Property #: 31199430012
Fed Reg Date: 08/21/1998
Crooked Creek Lake, LR03051
Ford City Co: Armstrong PA 16226–
Status: Unutilized
Comment: Approximately 1.72 acres of undeveloped land, subject to gas rights.

Tennessee

Building

Cheatham Lock & Dam
Property #: 31199520003
Fed Reg Date: 08/21/1998
Tract D, Lock Road
Nashville Co: Davidson TN 37207–
Status: Unutilized
Comment: 1100 sq. ft. w/storage bldgs on 7 acres, needs major rehab, contamination issues, 1 acre in fldwy, off-site use only modif. to struct. subj. to approval of St. Hist. Presv. Ofc.

Land

Tract 6827
Property #: 31199010927
Fed Reg Date: 08/21/1998
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 2½ miles west of Dover, TN
Status: Excess
Comment: .57 acres; subject to existing easements.

Tracts 6002–2 and 6010
Property #: 31199010928
Fed Reg Date: 08/21/1998
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 3½ miles south of village of Tabaccoport.
Status: Excess
Comment: 100.86 acres; subject to existing easements.

Tract 11516
Property #: 31199010929
Fed Reg Date: 08/21/1998
Barkley Lake
Ashland City Co: Dickson TN 37015–
Location: ½ mile downstream from Cheatham Dam.
Status: Excess
Comment: 26.25 acres; subject to existing easements.

Tract 2319
Property #: 31199010930
Fed Reg Date: 08/21/1998
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: West of Buckeye Bottom Road.
Status: Excess
Comment: 14.48 acres; subject to existing easements.

Tract 2227
Property #: 31199010931
Fed Reg Date: 08/21/1998
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: Old Jefferson Pike.
Status: Excess
Comment: 2.27 acres; subject to existing easements.

Tract 2107
Property #: 31199010932
Fed Reg Date: 08/21/1998
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: Across Fall Creek near Fall Creek camping area.
Status: Excess
Comment: 14.85 acres; subject to existing easements.

Tracts 2601, 2602, 2603, 2604
Property #: 31199010933
Fed Reg Date: 08/21/1998
Cordell Hull Lake and Dam Project
Doe Row Creek
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 56
Status: Unutilized
Comment: 11 acres; subject to existing easements.

Tract 1911
Property #: 31199010934
Fed Reg Date: 08/21/1998
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: East of Lamar Road
Status: Excess
Comment: 15.31 acres; subject to existing easements.

Tract 2321
Property #: 31199010935
Fed Reg Date: 08/21/1998
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: South of Old Jefferson Pike
Status: Excess
Comment: 12 acres; subject to existing easements.

Tract 7206
Property #: 31199010936
Fed Reg Date: 08/21/1998
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 2½ miles SE of Dover, TN.
Status: Excess
Comment: 10.15 acres; subject to existing easements.

Tracts 8813, 8814
Property #: 31199010937
Fed Reg Date: 08/21/1998
Barkley Lake
Cumberland Co: Stewart TN 37050–
Location: 1½ miles East of Cumberland City.
Status: Excess
Comment: 96 acres; subject to existing easements.

Tract 8911
Property #: 31199010938
Fed Reg Date: 08/21/1998
Barkley Lake
Cumberland City Co: Montgomery TN 37050–
Location: 4 miles East of Cumberland City.
Status: Excess
Comment: 7.7 acres; subject to existing easements.

Tract 11503
Property #: 31199010939
Fed Reg Date: 08/21/1998
Barkley Lake
Ashland City Co: Cheatham TN 37015–
Location: 2 miles downstream from Cheatham Dam.
Status: Excess
Comment: 1.1 acres; subject to existing easements.

Tracts 11523, 11524
Property #: 31199010940
Fed Reg Date: 08/21/1998
Barkley Lake
Ashland City Co: Cheatham TN 37015–
Location: 2½ miles downstream from Cheatham Dam.
Status: Excess
Comment: 19.5 acres; subject to existing easements.

Tract 6410
Property #: 31199010941
Fed Reg Date: 08/21/1998
Barkley Lake
Bumpus Mills Co: Stewart TN 37028–
Location: 4½ miles SW. of Bumpus Mills.
Status: Excess
Comment: 17 acres; subject to existing easements.

Tract 9707
Property #: 31199010943
Fed Reg Date: 08/21/1998
Barkley Lake
Palmyer Co: Montgomery TN 37142–
Location: 3 miles NE of Palmyer, TN. Highway 149
Status: Excess
Comment: 6.6 acres; subject to existing easements.

Tract 6949
Property #: 31199010944
Fed Reg Date: 08/21/1998
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 1½ miles SE of Dover, TN.
Status: Excess
Comment: 29.67 acres; subject to existing easements.

Tracts 6005 and 6017
Property #: 31199011173
Fed Reg Date: 08/21/1998
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 3 miles south of Village of Tobaccoport.
Status: Excess
Comment: 5 acres; subject to existing easements.

Tracts K–1191, K–1135
Property #: 31199130007
Fed Reg Date: 08/21/1998
Old Hickory Lock and Dam
Hartsville Co: Trousdale TN 37074–
Status: Underutilized
Comment: 92 acres (38 acres in floodway), most recent use—recreation.

Tract A–102
Property #: 31199140006
Fed Reg Date: 08/21/1998
Dale Hollow Lake & Dam Project
Canoe Ridge, State Hwy 52

Celina Co: Clay TN 38551–
Status: Underutilized
Comment: 351 acres, most recent use—hunting, subject to existing easements.

Tract A–120
Property #: 31199140007
Fed Reg Date: 08/21/1998
Dale Hollow Lake & Dam Project
Swann Ridge, State Hwy No. 53
Celina Co: Clay TN 38551–
Status: Underutilized
Comment: 883 acres, most recent use—hunting, subject to existing easements.

Tracts A–20, A–21
Property #: 31199140008
Fed Reg Date: 08/21/1998
Dale Hollow Lake & Dam Project
Red Oak Ridge, State Hwy No. 53
Celina Co: Clay TN 38551–
Status: Underutilized
Comment: 821 acres, most recent use—recreation, subject to existing easements.

Tract D–185
Property #: 31199140010
Fed Reg Date: 08/21/1998
Dale Hollow Lake & Dam Project
Ashburn Creek, Hwy No. 53
Livingston Co: Clay TN 38570–
Status: Underutilized
Comment: 883 acres, most recent use—hunting, subject to existing easements.

Virginia

Building

Peters Ridge Site
Property #: 31199430013
Fed Reg Date: 08/21/1998
Gathright Dam
Covington VA
Status: Excess
Comment: 64 sq. ft., metal bldg.

Metal Bldg.
Property #: 31199620009
Fed Reg Date: 08/21/1998
John H. Kerr Dam & Reservoir
Co: Boydton VA
Status: Excess
Comment: 800 sq. ft., most recent use—storage, off-site use only.

West Virginia

Building

Dwelling 1
Property #: 31199810003
Fed Reg Date: 08/21/1998
Summersville Lake
Summersville Co: Nicholas WV 26651–9802
Status: Excess
Comment: 1200 sq. ft., presence of asbestos/lead paint, most recent use—residential, off-site use only.

Dwelling 2
Property #: 31199810004
Fed Reg Date: 08/21/1998
Sutton Lake
Sutton Co: Braxton WV 26651–9802
Status: Excess
Comment: 1100 sq. ft., must recent use—residential, off-site use only.

Wisconsin

Building

Former Lockmaster's Dwelling
Property #: 31199011524
Fed Reg Date: 08/21/1998
Cedar Locks
4527 East Wisconsin Road
Appleton Co: Outagamie WI 54911–
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwellin
Property #: 31199011525
Fed Reg Date: 08/21/1998
Appleton 4th Lock
905 South Lowe Street
Appleton Co: Outagamie WI 54911–
Status: Unutilized
Comment: 908 sq. ft.; 2 story wood frame residence; needs rehab.

Former Lockmaster's Dwellin
Property #: 31199011527
Fed Reg Date: 08/21/1998
Kaukauna 1st Lock
301 Canal Street
Kaukauna Co: Outagamie WI 54131–
Status: Unutilized
Comment: 1290 sq. ft.; 2 story wood frame residence; needs rehab; secured areas with alternate access.

Former Lockmaster's Dwellin
Property #: 31199011531
Fed Reg Date: 8/21/1998
Appleton 1st Lock
905 South Oneida Street
Appleton Co: Ouagamie WI 54911–
Status: Unutilized
Comment: 1300 sq. ft.; potential utilities; 2 story wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwellin
Property #: 31199011533
Fed Reg Date: 08/21/1998
Rapid Croche Lock
Lock Road
Wrightstown Co: Outagamie WI 54180–
Location: 3 miles southwest of intersection State Highway 96 and Canal Road
Status: Unutilized
Comment: 1952 sq. ft.; 2 story wood frame residence; potential utilities; needs rehab.

Former Lockmaster's Dwellin
Property #: 31199011535
Fed Reg Date: 08/21/1998
Little KauKauna Lock
Little KauKauna
Lawrence Co: Brown WI 54130–
Location: 2 miles southeasterly from intersection of Lost Dauphin Road (County Trunk Highway ''D'') and River Street.
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab.

Former Lockmaster's Dwellin
Property #: 31199011536
Fed Reg Date: 08/21/1998
Little Chute, 2nd Lock
214 Mill Street
Little Chute Co: Outagamie WI 54140–
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; potential utilities; needs rehab; secured area with alternate access.

DOT

California

Building

3 Bachelor Enlisted Quarter
Property #: 87199810001
Fed Reg Date: 08/21/1998
U.S. Coast Guard Station
Humboldt Bay
Samoa CA 95564–9999
Status: Unutilized
Comment: 2550 sq. ft. each, 2-story, wood, most recent use–residential, needs rehab, off-site use only.

GSA

California

Building

112 Bldgs.—Skaggs Island
Property #: 54199730001
Fed Reg Date: 08/28/1998
Naval Security Group
Skaggs Island Co: Sonoma CA
Status: Excess
Comment: 32–13,374 sq. ft., temp. quonset huts to perm. wood/concrete, most recent use—housing, admin., support facilities, remote loction, below sea level, high maintenance
GSA Number: 9–N–CA–1488.

Marine Culture Laboratory
Property #: 54199830011
Fed Reg Date: 10/23/1998
Granite Canyon
34500 Coast Highway
Monterey CA 93940–
Status: Surplus
Comment: 3297 sq. ft. office bldg. & lab on 4.553 acres, envir. clean-up plans scheduled
GSA Number: 9–C–CA–1499.

Natl Weather Svc Station
Property #: 54199840007
Fed Reg Date: 11/13/1998
Blue Canyon Airport
Emigrant Gap CA 95715–
Status: Surplus
Comment: 3140 sq. ft., presence of asbestos, most recent use—ofc/residential/storage, land agreements w/U.S. Forest Service exist, special use permit
GSA Number: 9–C–CA–1521.

Land

Lake Sonoma, Tract 1607
Property #: 54199740020
Fed Reg Date: 01/22/1998
Geyserville CA
Status: Excess
Comment: 139 acres, most recent use—recreation
GSA Number: 9–D–CA–1504.

Delaware

Building

Unaccompanied Pers. Housing
Property #: 54199840009
Fed Reg Date: 11/27/1998
800 Inlet Road
Rehoboth Beach Co: Sussex DE 19971–2698
Status: Excess
Comment: 3600 sq. ft., 2-story, termite damage, most recent use—housing, off-site use only
GSA Number: 4–U–DE–462.

Hawaii

Land

Former S. Point AF Station
Property #: 54199830001

Fed Reg Date: 07/31/1998
Island of HI Co:: Naalehu HI 96772–
Status: Excess
Comment: Parcel #1 = 5.739 acres w/2 deteriorated bldgs., Parcel #2 = 0.70 acres, properties are extremely remote
GSA Number: 9–D–HI–443–B.

Indiana

Building

Vincennes Federal Building
Property #: 54199820015
Fed Reg Date: 08/28/1998
501 Busseron St.
Vincennes Co: Knox IN 47591–
Status: Excess
Comment: 22,000 sq. ft., presence of asbestos, property is historically significant, most recent use—office bldg.
GSA Number: 1–G–IN–592.

Kansas

Building

Bldg. 2703
Property #: 54199840014
Fed Reg Date: 01/22/1999
Forbes Field, Topeka Air
Industrial Park
Topeka Co: Shawnee KS
Status: Excess
Comment: 192,985 sq. ft., needs repair, most recent use—storage/warehouse
GSA Number: 7–D–KS–422–111.

Maryland

Building

Waldorf Housing
Property #: 54199840012
Fed Reg Date: 12/11/1998
Country Lane and Spruce
Street
Waldorf Co: Charles MD
Status: Excess
Comment: 12 unit townhouse complex = 5 two bedroom, 1 bath; 5 three bedroom, 1 bath; 2 three bedroom, 2 bath; need rehab
GSA Number: 4–N–MD–0546.

Michigan

Building

Parcel 1
Property #: 54199730011
Fed Reg Date: 08/28/1998
Old Lifeboat Station
East Tawas Co: Iosco MI
Status: Excess
Comment: 2062 sq. ft. station bldg., garage, boathouse, oilhouse, possible asbestos/lead paint, eligible for listing on National Register of Historic Places
GSA Number: 1–UU–MI–500.

New Jersey

Building

ESMT Manasquan
Property #: 54199730025
Fed Reg Date: 08/28/1998
124 Ocean Ave.
Manasquan Co: Monmouth NJ
Status: Excess
Comment: main bldg. (5714 sq. ft.), paint locker (96 sq. ft.), garage (3880 sq. ft.), need repairs, presence of asbestos/lead paint, Coast Guard easement.
GSA Number: 1–U–NJ–0632.

New York

Building

''Terry Hill''
Property #: 54199830008
Fed Reg Date: 08/21/1998
County Road 51
Manorville NY
Status: Surplus
Comment: 2 block structures, 780/272 sq. ft., no sanitary facilities, most recent use—storage/comm. facility, w/6.19 acres in fee and 4.99 acre easement, remote area
GSA Number: 1–D–NY–864.

North Carolina

Building

Coinjock Station
Property #: 54199840010
Fed Reg Date: 11/27/1998
Canal Road
Coinjock Co: Currituck NC 27293–
Status: Excess
Comment: 4 bldgs., most recent use—storage/office
GSA Number: 4–U–NC–734.

Land

Greenville Relay Station
Property #: 541998440013
Fed Reg Date: 12/11/1998
Site C
Greenville Co: Pitt NC
Status: Excess
Comment: 589 acres w/27,830 sq. ft. concrete block bldg. (2 acre chemical waste storage site located on SE portion of property)
GSA Number: 4–GR–NC–0721–B.

Ohio

Building

Lorain Housing
Property #: 54199840006
Fed Reg Date: 11/13/1998
238–240 Augusta Ave.
Lorain OH 44051–
Status: Excess
Comment: 3000 sq. ft. duplex, 2-story, good condition, possible lead based paint, existing easements
GSA Number: 1–U–OH–814.

Oklahoma

Building

NIPER
Property #: 54199840011
Fed Reg Date: 11/27/1998
Energy Research
220 Virginia Ave.
Bartlesville OK 74003–
Status: Surplus
Comment: 25 structures on 15.66 acres of land, most recent use—offices to labs, environmental issues
GSA Number: 7–B–OK–563.

Texas

Building

Soil Testing Lab
Property #: 54199840008
Fed Reg Date: 11/13/1998
4815 Cass St.
Dallas TX 75235–
Status: Excess
Comment: 40,000 sq. ft., most recent use—laboratory
GSA Number: 7–D–TX–1059.

Land

Camp Bullis, Tract 9
Property #: 21199420462
Fed Reg Date: 01/22/1999
Fort Sam Houston (formerly)
San Antonio Co: Bexar TX 57501
Status: Surplus
Comment: 1.07 acres of undeveloped land, subject to existing easements
GSA Number: 7–D–TX–0474E.

Washington

Building

Moses Lake U.S. Army Rsv Ct
Property #: 21199630118
Fed Reg Date: 10/23/1998
Grant County Airport
Moses Lake Co: Grant WA 98837–
Status: Surplus
Comment: 4499 sq. ft./2.86 acres, most recent use—admin.
GSA Number: 9–D–WA–1141.

747 Building Complex
Property #: 54199820005
Fed Reg Date: 08/28/1988
805 Goethals Drive
Richland Co: Benton WA 99352–
Status: Surplus
Comment: 4 bldgs. (2 bldgs. utilized w/lease provisions), most recent use—labs/offices, presence of asbestos/lead paint
GSA Number: 9–B–WA–1145.

Wisconsin

Building

National Weather Svc Forecast 0
Property #: 5419982004
Fed Reg Date: 08/28/1998
3009 W. Fairview Rd.
Neenah Co: Winnebago WI 54956–
Status: Excess
Comment: 1755 sq. ft., good condition, presence of asbestos/lead paint, most recent use—office
GSA Number: 1–C–WI–594.

Wausau Federal Building
Property #: 54199820016
Fed Reg Date: 08/28/1998
317 First Street
Wausau Co: Marathon WI 54401–
Status: Excess
Comment: 30,500 sq. ft., presence of asbestos, eligible for listing on the Natl Register of Historic Places, most recent use—office
GSA Number: 1–G–WI–593.

Naval Reserve Center
Property #: 54199830002
Fed Reg Date: 07/31/1998
215 South Eagle Street
Oshkosh Co: Winnebago WI 54903–
Status: Excess
Comment: 16,260 sq. ft., excellent condition, presence of asbestos/lead paint, most recent use—office
GSA Number: 1–N–WI–596.

Navy

California

Building

Bldg. 105QA
Property #: 77199830002
Fed Reg Date: 12/25/1998
Naval Station, San Diego

Mission Gorge Recreation Center
San Diego CA 92136–
Status: Excess
Comment: 1000 sq. ft., needs repair, most recent use—water treatment facility, off-site use only.

Bldg. 102QA
Property #: 77199830003
Fed Reg Date: 12/25/1998
Naval Station, San Diego
Mission Gorge Recreation Center
San Diego CA 92136–
Status: Excess
Comment: 6138 sq. ft., needs repair, most recent use—pro shop, off-site use only.

Bldg. 118QA
Property #: 77199830004
Fed Reg Date: 12/25/1998
Naval Station, San Diego
Mission Gorge Recreation Center
San Diego CA 92136–
Status: Excess
Comment: 5635 sq. ft., needs repair, most recent use—coffee shop-grille, off-site use only.

Bldg. 119QA
Property #: 77199830005
Fed Reg Date: 12/25/1998
Naval Station, San Diego
Mission Gorge Recreation Center
San Diego CA 92136–
Status: Excess
Comment: 1277 sq. ft., needs repair, most recent use—lockers, off-site use only.

Bldg. 129QA
Property #: 77199830006
Fed Reg Date: 12/25/1998
Naval Station, San Diego
Mission Gorge Recreation Center
San Diego CA 92136–
Status: Excess
Comment: 2832 sq. ft., needs repair, most recent use—patio cover, off-site use only.

Bldg. 140QA
Property #: 77199830007
Fed Reg Date: 12/25/1998
Naval Station, San Diego
Mission Gorge Recreation Center
San Diego CA 92136–
Status: Excess
Comment: 1648 sq. ft., needs repair, most recent use—golf cart battery shop, off-site use only.

Bldg. 176QA
Property #: 77199830008
Fed Reg Date: 12/25/1998
Naval Station, San Diego
Mission Gorge Recreation Center
San Diego CA 92136–
Status: Excess
Comment: 5200 sq. ft., needs repair, most recent use—golf cart shelter, off-site use only.

Bldg. 193
Property #: 77199830112
Fed Reg Date: 12/25/1998
Naval Station
San Diego CA 92136–5294
Status: Excess
Comment: 780 sq. ft., needs major repairs, most recent use—utility plant, off-site use only.

Bldg. 203
Property #: 77199830113
Fed Reg Date: 12/25/1998
Naval Station
San Diego CA 92136–5294
Status: Excess
Comment: 360 sq. ft., needs major repairs, most recent use—valve house, off-site use only.

Bldg. 228
Property #: 77199830114
Fed Reg Date: 12/25/1998
Naval Station
San Diego CA 92136–5294
Status: Excess
Comment: 6142 sq. ft., needs major repairs, most recent use—workshop, off-site use only.

Bldg. 286
Property #: 77199830115
Fed Reg Date: 12/25/1998
Naval Station
San Diego CA 92136–5294
Status: Excess
Comment: 23,760 sq. ft., needs major repairs, most recent use—shop, off-site use only.

Bldg. 308
Property #: 77199830116
Fed Reg Date: 12/25/1998
Naval Station
San Diego CA 92136–5294
Status: Excess
Comment: 3400 sq. ft., needs major repairs, most recent use—workshop, off-site use only.

Bldg. 314
Property #: 77199830117
Fed Reg Date: 12/25/1998
Naval Station
San Diego CA 92136–5294
Status: Excess
Comment: 160 sq. ft., most recent use—water treatment facility, off-site use only.

Bldg. 315
Property #: 77199830118
Fed Reg Date: 12/25/1998
Naval Station
San Diego CA 92136–5294
Status: Excess
Comment: 160 sq. ft., needs major repairs, most recent use—water treatment facility, off-site use only.

Bldg. 335
Property #: 77199830119
Fed Reg Date: 12/25/1998
Naval Station
San Diego CA 92136–5294
Status: Excess
Comment: 14,000 sq. ft., needs major repairs, most recent use—workshop, off-site use only.

Bldg. 398
Property #: 77199830120
Fed Reg Date: 12/25/1998
Naval Station
San Diego CA 92136–5294
Status: Excess
Comment: 1530 sq. ft., needs major repairs, most recent use—admin., off-site use only.

Bldg. 3201
Property #: 77199830121
Fed Reg Date: 12/25/1998
Naval Station
San Diego CA 92136–5294
Status: Excess
Comment: 1750 sq. ft., needs major repairs, most recent use—workshop, off-site use only.

Connecticut

Building

Pier 7
Property #: 77199710063
Fed Reg Date: 12/25/1998
Naval Undersea Warfare Center
New London Co: New London CT 06320–5594
Status: Excess
Comment: 700′ long by 3′ wide, rectangular shaped reinforced concrete pier.

Bldg. 84, Anx. of Gilmore H
Property #: 77199830009
Fed Reg Date: 12/25/1998
Naval Submarine Base New London
Groton Co: New London CT 06349–
Status: Excess
Comment: 5400 sq. ft., 2-story, presence of asbestos/lead paint, needs rehab, off-site use only.

Bldg. 150, McNeil Hall
Property #: 77199830010
Fed Reg Date: 12/25/1998
Naval Submarine Base New London
Groton Co: New London CT 06349–
Status: Excess
Comment: 27,120 sq. ft., 4-story, presence of asbestos/lead paint, needs rehab, off-site use only.

Bldg. 437, Fife Hall
Property #: 77199830011
Fed Reg Date: 12/25/1998
Naval Submarine Base New London
Groton Co: New London CT 06349–
Status: Excess
Comment: 51,790 sq. ft., 3-story, presence of asbestos/lead paint, needs rehab, off-site use only.

Bldg. 295
Property #: 77199830012
Fed Reg Date: 12/25/1998
Naval Submarine Base New London
Groton Co: New London CT 06349–
Status: Excess
Comment: presence of asbestos/lead paint, needs rehab, off-site use only.

Facility CH–901
Property #: 77199830045
Fed Reg Date: 12/25/1998
Naval Submarine Base
Co: New London CT
Status: Excess
Comment: 6161 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—community center, off-site use only.

Hawaii

Building

Bldg. S87, Radio Trans. Fac
Property #: 77199240011
Fed Reg Date: 12/25/1998
Lualualei, Naval Station,
Eastern Pacific
Wahiawa Co: Honolulu HI 96786–3050
Status: Unutilized
Comment: 7566 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.

Bldg. 64, Radio Trans Facil
Property #: 77199310004
Fed Reg Date: 12/25/1998

Naval Computer & Telecommunications Areas
Wahiawa Co: Honolulu HI 96786–3050
Status: Unutilized
Comment: 3612 sq., 1-story, access restrictions, needs rehab, most recent use—storage, off-site use only.

Bldg. 442, Naval Station
Property #: 77199630088
Fed Reg Date: 12/25/1998
Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Status: Excess
Comment: 192 sq. ft, most recent use—storage, off-site use only.

Bldg. S180
Property #: 77199640039
Fed Reg Date: 12/25/1998
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Status: Unutilized
Comment: 3412 sq. ft., 2-story, most recent use—bomb shelter, off-site use only, relocation may not be feasible.

Bldg. S181
Property #: 77199640040
Fed Reg Date: 12/25/1998
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Status: Unutilized
Comment: 4258 sq. ft., 1-story, most recent use—bomb shelter, off-site use only, relocation may not be feasible.

Bldg. 219
Property #: 77199640041
Fed Reg Date: 12/25/1998
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Status: Unutilized
Comment: 620 sq. ft., most recent use—damage control, off-site use only, relocation may not be feasible.

Bldg. 220
Property #: 77199640042
Fed Reg Date: 12/25/1998
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Status: Unutilized
Comment: 620 sq. ft., most recent use—damage control, off-site use only, relocation may not be feasible.

Bldg. 222
Property #: 77199640043
Fed Reg Date: 12/25/1998
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Status: Unutilized
Comment: 620 sq. ft., most recent use—damage control, off-site use only, relocation may not be feasible.

Bldg. 160
Property #: 77199840002
Fed Reg Date: 10/23/1998
Naval Station, Pearl Harbor
Pearl Harbor Co: Honolulu HI 96860–
Status: Excess
Comment: 6070 sq. ft., needs rehab, presence of lead paint, most recent use—storage/office, off-site use only.

Maine

Building

Bldg. 22
Property #: 77199840008
Fed Reg Date: 10/23/1998
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Status: Excess
Comment: 2687 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 36
Property #: 77199840009
Fed Reg Date: 10/23/1998
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Status: Excess
Comment: 8840 sq. ft., most recent use—storage, off-site use only.

Bldg. 38
Property #: 77199840010
Fed Reg Date: 10/23/1998
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Status: Excess
Comment: 19,612 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—office, off-site use only.

Bldg. 234
Property #: 77199840011
Fed Reg Date: 10/23/1998
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Status: Excess
Comment: 768 sq. ft., presence of asbestos/lead paint, most recent use—generator bldg., off-site use only.

New Hampshire

Building

Bldg. 246
Property #: 77199820028
Fed Reg Date: 12/25/1998
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Status: Unutilized
Comment: metal frame structure, off-site use only.

Bldg. 335
Property #: 77199820029
Fed Reg Date: 12/25/1998
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Status: Unutilized
Comment: 1000 sq. ft., brick, off-site use only.

Bldg. 128
Property #: 77199830015
Fed Reg Date: 12/25/1998
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Status: Excess
Comment: 10,900 sq. ft., needs rehab, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 185
Property #: 77199830016
Fed Reg Date: 12/25/1998
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Status: Excess
Comment: 2310 sq. ft., needs rehab, presence of asbestos, most recent use—office, off-site use only.

Bldg. 314
Property #: 77199830017
Fed Reg Date: 12/25/1998
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Status: Excess
Comment: cement block bldg., needs rehab, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 336
Property #: 77199830018
Fed Reg Date: 12/25/1998
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Status: Excess
Comment: metal bldg w/cement block foundation, off-site use only.

New York

Building

101 Housing Units
Property #: 77199810093
Fed Reg Date: 12/25/1998
Mitchel Complex
82B Mitchel Avenue
East Meadow Co: Nassau NY 11554–
Status: Unutilized
Comment: 422 sq. ft., frame, 2-story, presence of asbestos/lead paint, most recent use—residential, off-site use only.

36 Garages
Property #: 77199810094
Fed Reg Date: 12/25/1998
Mitchel Complex
82B Mitchel Avenue
East Meadow Co: Nassau NY 11554–
Status: Unutilized
Comment: 350 sq. ft., masonary, most recent use—garage, off-site use only.

Naval Reserve Center
Property #: 77199840017
Fed Reg Date: 11/13/1998
201 Third Avenue
Frankfort NY 13340–1419
Status: Unutilized
Comment: 10,000 sq. ft., most recent use—training facility.

Pennsylvania

Building

Bldg. 76
Property #: 77199830075
Fed Reg Date: 12/25/1998
Naval Inventory Control Point
Philadelphia Co: Philadelphia PA 19111–5098
Status: Excess
Comment: 3475 sq. ft., cinder block/metal, most recent use—child care, needs repair, off-site use only.

Bldg. 44
Property #: 77199830093
Fed Reg Date: 12/25/1998
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Status: Excess
Comment: 2154 sq. ft., needs repair, presence of asbestos, most recent use—medical clinic, off-site use only.

Bldg. 48
Property #: 77199830094
Fed Reg Date: 12/25/1998
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Status: Excess
Comment: 2737 sq. ft., needs repair, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 49

Property #: 77199830095
Fed Reg Date: 12/25/1998
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Status: Excess
Comment: 3263 sq. ft., needs repair, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 64
Property #: 77199830096
Fed Reg Date: 12/25/1998
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Status: Excess
Comment: 3157 sq. ft., needs major repairs, presence of asbestos, most recent use—office, off-site use only.

Bldg. 65 U/V
Property #: 771998300977
Fed Reg Date: 12/25/1998
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Status: Excess
Comment: 4829 sq. ft., needs repair, presence of asbestos, most recent use—quarters, off-site use only.

Bldg. 133
Property #: 77199830098
Fed Reg Date: 12/25/1998
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Status: Excess
Comment: 27,600 sq. ft., needs repair, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 337
Property #: 77199830099
Fed Reg Date: 12/25/1998
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Status: Excess
Comment: 1025 sq. ft., needs major repairs, presence of asbestos, most recent use—garage, off-site use only.

Bldg 418
Property #: 77199830100
Fed Reg Date: 12/25/1998
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Status: Excess
Comment: 2578 sq. ft., needs repair, presence of asbestos, most recent use—quarters, off-site use only.

Bldg. 570
Property #: 77199830101
Fed Reg Date: 12/25/1998
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Status: Excess
Comment: 9123 sq. ft., needs repair, presence of asbestos, most recent use—tool room, off-site use only.

Bldg. 605
Property #: 77199830102
Fed Reg Date: 12/25/1998
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Status: Excess
Comment: 1118 sq. ft., needs repair, presence of asbestos, most recent use—garage, off-site use only.

Rhode Island

Building

Bldg. 69
Property #: 77199810052
Fed Reg Date: 12/25/1998
Naval Education and Training Center
Newport Co: Newport RI 02841–
Status: Unutilized
Comment: 600 sq. ft., concrete, presence of asbestos, most recent use—storage, off-site use only.

Bldg. A33
Property #: 77199810083
Fed Reg Date: 12/25/1998
Navy Hospital Gate 5
Newport RI 02841–
Status: Underutilized
Comment: 1512 sq. ft., detached 5 stall garage, needs repair, presence of asbestos, off-site use only.

Facility T
Property #: 77199810175
Fed Reg Date: 12/25/1998
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Status: Unutilized
Comment: 1610 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—office, off-site use only.

Facility U
Property #: 77199810176
Fed Reg Date: 12/25/1998
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Status: Unutilized
Comment: 1593 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—maint. shop, off-site use only.

Facility V
Property #: 77199810177
Fed Reg Date: 12/25/1998
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Status: Unutilized
Comment: 1593 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—maint. shop, off-site use only.

Facility W
Property #: 77199810178
Fed Reg Date: 12/25/1998
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Status: Unutilized
Comment: 1593 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—training/officer, off-site use only.

Facility X
Property #: 77199810179
Fed Reg Date: 12/25/1998
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Status: Unutilized
Comment: 1593 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—office, off-site use only.

Facility Y
Property #: 77199810180
Fed Reg Date: 12/25/1998
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Status: Unutilized
Comment: 1593 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—admin., off-site use only.

Facility 322
Property #: 77199810181
Fed Reg Date: 12/25/1998
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Status: Unutilized
Comment: 800 sq. ft., possible asbestos/lead paint, most recent use—maint. shop, off-site use only.

Facility 323
Property #: 77199810182
Fed Reg Date: 12/25/1998
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Status: Unutilized
Comment: 800 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—maint. shop, off-site use only.

Facility 324
Property #: 77199810183
Fed Reg Date: 12/25/1998
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Status: Unutilized
Comment: 800 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—maint. shop, off-site use only.

Facility 325
Property #: 77199810184
Fed Reg Date: 12/25/1998
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Status: Unutilized
Comment: 800 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—storage, off-site use only.

Facility 326
Property #: 77199810185
Fed Reg Date: 12/25/1998
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Status: Unutilized
Comment: 800 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—storage, off-site use only.

Facility 327
Property #: 77199810186
Fed Reg Date: 12/25/1998
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Status: Unutilized
Comment: 800 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—maint. shop, off-site use only.

Facility 342
Property #: 77199810259
Fed Reg Date: 12/25/1998
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Status: Unutilized
Comment: 646 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.

Facility 340
Property #: 77199810260
Fed Reg Date: 12/25/1998
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Status: Unutilized
Comment: 96 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—heating plant bldg., off-site use only.

Facility 697
Property #: 77199810262
Fed Reg Date: 12/25/1998
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Status: Unutilized
Comment: 960 sq. ft., presence of asbestos/lead paint, most recent use—self help shop, off-site use only.

Facility 696
Property #: 77199810263
Fed Reg Date: 12/25/1998
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Status: Unutilized
Comment: 960 sq. ft., presence of asbestos/lead paint, most recent use—comm maint. shop, off-site use only.

Facility 35
Property #: 77199810264
Fed Reg Date: 12/25/1998
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Status: Unutilized
Comment: 2880 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—auto storage, off-site use only.

Bldg. 70
Property #: 77199840018
Fed Reg Date: 11/13/1998
Naval Station, Newport
Middletown Co: Newport RI 02842–
Status: Unutilized
Comment: 1900 sq ft., most recent use—storage, off-site use only.

Bldg. 111
Property #: 77199840019
Fed Reg Date: 11/13/1998
Naval Station, Newport
Middletown Co: Newport RI 02842–
Status: Unutilized
Comment: 560 sq ft., most recent use—storage, off-site use only.

Facility 700
Property #: 77199840029
Fed Reg Date: 12/11/1998
Naval Station
Newport RI 02841–
Status: Unutilized
Comment: 6230 sq ft., most recent use—wastewater treatment plant, off-site use only.

Facility 994
Property #: 77199840030
Fed Reg Date: 12/11/1998
Naval Station
Newport RI 02841–
Status: Unutilized
Comment: 960 sq ft., most recent use—storage, off-site use only.

Facility 449
Property #: 77199840031
Fed Reg Date: 12/11/1998
Naval Station
Newport RI 02841–
Status: Unutilized
Comment: 140 sq ft., most recent use—chlorination shed, off-site use only.

Facility 1324
Property #: 77199840032
Fed Reg Date: 12/11/1998
Naval Station
Newport RI 02841–
Status: Unutilized
Comment: 107 sq ft., most recent use—lift station controls shed, off-site use only.

Washington

Building

149 Duplexes
Property #: 77199820118
Fed Reg Date: 12/25/1998
Navy Transient Family Accom.
Eastpark
90 Magnuson Way
Bremerton WA 98310–
Location: Structures 002–148, 150, 152–153, 157
Status: Excess
Comment: 1286 sq. ft./1580 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing, off-site use only.

9 Fourplexes
Property #: 77199820119
Fed Reg Date: 12/25/1998
Navy Transient Family Accom.
Eastpark
90 Magnuson Way
Bremerton WA 98310–
Location: Structures 151, 155–156, 158–163
Status: Excess
Comment: 3082 sq. ft./3192 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing, off-site use only.

2 Sixplexes
Property #: 77199820120
Fed Reg Date: 12/25/1998
Navy Transient Family Accom.
Eastpark
90 Magnuson Way
Bremerton WA 98310–
Location: Structures 154, 189
Status: Excess
Comment: 4618 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing, off-site use only.

1 Single Unit
Property #: 77199820121
Fed Reg Date: 12/25/1998
Navy Transient Family Accom.
Eastpark
90 Magnuson Way
Bremerton WA 98310–
Location: Structure 149
Status: Excess
Comment: 790 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing, off-site use only.

Storage Building
Property #: 77199820122
Fed Reg Date: 12/25/1998
Navy Transient Family Accom.
Eastpark
90 Magnuson Way
Bremerton WA 98310–
Status: Excess
Comment: 2160 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing, off-site use only.

Admin. Building, Structure
Property #: 77199820123
Fed Reg Date: 12/25/1998
Navy Transient Family Accom.
Eastpark
90 Magnuson Way
Bremerton WA 98310–
Status: Excess
Comment: 9550 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing, off-site use only.

Alabama

Land

VA Medical Center
Property #: 97199010053
Fed Reg Date: 09/11/1998
VAMC
Tuskegee Co: Macon AL 36083–
Status: Underutilized
Comment: 40 acres, buffer to VA Medical Center, potential utilities, undeveloped.

California

Land

Land
Property #: 97199240001
Fed Reg Date: 09/11/1998
4150 Clement Street
San Francisco Co: San Francisco CA 94121–
Status: Underutilized
Comment: 4 acres; landslide area.

Indiana

Building

Bldg. 105, VAMC
Property #: 97199230006
Fed Reg Date: 09/11/1998
East 38th Street
Marion Co: Grant IN 46952–
Status: Excess
Comment: 310 sq. ft., 1 story stone structure, no sanitary or heating facilities, Natl Register of Historic Places

Bldg. 140, VAMC
Property #: 97199230007
Fed Reg Date: 09/11/1998
East 38th Street
Marion Co: Grant IN 46952–
Status: Excess
Comment: 60 sq. ft., concrete block bldg., most recent use—trash house.

Bldg. 7
Property #: 97199810001
Fed Reg Date: 09/11/1998
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Status: Underutilized
Comment: 16,864 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places.

Bldg. 10
Property #: 97199810002
Fed Reg Date: 09/11/1998
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Status: Underutilized
Comment: 16,361 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places.

VA

Indiana

Building

Bldg. 11
Property #: 97199810003
Fed Reg Date: 9/11/1998
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Status: Underutilized
Comment: 16,361 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places.

Bldg. 18
Property #: 97199810004
Fed Reg Date: 9/11/1998
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Status: Underutilized
Comment: 13,802 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places.

Bldg. 25
Property #: 97199810005
Fed Reg Date: 9/11/1998
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Status: Unutilized
Comment: 32,892 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places.

VA

Iowa

Land

40.66 acres
Property #: 97199740002
Fed Reg Date: 9/11/1998
VA Medical Center
1515 West Pleasant St.
Knoxville Co: Marion IA 50138–
Status: Unutilized
Comment: gold course, easement requirements.

Maryland

Land

VA Medical Center
Property #: 97199010020
Fed Reg Date: 9/11/1998
9500 North Point Road
Fort Howard Co: Baltimore MD 21052–
Status: Underutilized
Comment: Approx. 10 acres, wetland and periodically floods, most recent use—dump site for leaves.

Pennsylvania

Building

Bldg. 25—VA Medical Center
Property #: 97199210001
Fed Reg Date: 9/11/1998
Delafield Road
Pittsburgh Co: Allegheny PA 15215–
Status: Unutilized
Comment: 133 sq. ft., one story brick guard house, needs rehab.

VA

Pennsylvania

Building

Bldg. 3, VAMC
Property #: 97199230012
Fed Reg Date: 9/11/1998
1700 South Lincoln Avenue
Lebanon Co: Lebanon PA 17042–
Status: Underutilized
Comment: portion of bldg. (3850 and 4360 sq. ft.), most recent use—storage, second floor—lacks elevator access.

Texas

Land

Property #: 97199010079
Fed Reg Date: 9/11/1998
Olin E. Teague Veterans Center 1901 South 1st Street
Temple Co: Bell TX 76504–
Status: Underutilized
Comment: 13 acres, portion formerly landfill, portion near flammable materials, railroad crosses property, potential utilities.

Wisconsin

Building

Bldg. 8
Property #: 97199010056
Fed Reg Date: 9/11/1998
VA Medical Center
County Highway E.
Tomah Co: Monroe WI 54660–
Status: Underutilized
Comment: 2200 sq. ft., 2 story wood frame, possible asbestos, potential utilities, structural deficiencies, needs rehab.

VA

Wisconsin

Land

VA Medical Center
Property #: 97199010054
Fed Reg Date: 09/11/1998
County Highway E
Tomah Co: Monroe WI 54660–
Status: Underutilized
Comment: 12.4 acres, serves as buffer between center and private property, no utilities.

TITLE V PROPERTIES REPORTED IN YEAR 1998 WHICH ARE SUITABLE AND UNAVAILABLE

Air Force

Colorado

Building

Bldg. 9023
Property #: 18199730010
Fed Reg Date: 08/21/1998
U.S. Air Force Academy
Colorado Springs Co: El Paso CO 80814–2400
Status: Underutilized
Reason: utilized.

Bldg. 9027
Property #: 18199730011
Fed Reg Date: 08/21/1998
U.S. Air Force Academy
Colorado Springs Co: El Paso CO 80814–2400
Status: Underutilized
Reason: utilized.

Idaho

Building

Bldg. 224
Property #: 18199840008
Fed Reg Date: 01/22/1999
Mountain Home Air Force
Co: Elmore ID 83648–
Status: Unutilized
Reason: Extension of runway.

Iowa

Building

Bldg. 00627
Property #: 18199310001
Fed Reg Date: 08/21/1998
Sioux Gateway Airport
Sioux City Co: Woodbury IA 51110–
Status: Unutilized
Reason: Will be transferred to Sioux City.

Air Force

Iowa

Building

Bldg. 00669
Property #: 18199310002
Fed Reg Date: 08/21/1998
Sioux Gateway Airport
Sioux City Co: Woodbury IA 51110–
Status: Unutilized
Reason: Will be transferred to Sioux City.

Michigan

Building

Bldg. 50
Property #: 18199010790
Fed Reg Date: 08/21/1998
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Status: Excess
Reason: Renewal of lease.

Bldg. 14
Property #: 18199010833
Fed Reg Date: 08/21/1998
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Status: Excess
Reason: Renewal of lease.

Bldg. 16
Property #: 18199010834
Fed Reg Date: 08/21/1998
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Status: Excess
Reason: Renewal of lease.

Bldg. 15
Property #: 18199010864
Fed Reg Date: 08/21/1998
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Status: Excess
Reason: Renewal of lease.

Air Force

Nebraska

Building

Bldg. 64
Property #: 18199720040
Fed Reg Date: 08/21/1998
Offutt AFB
Silver Creek Co: Nance NE 68113–
Status: Unutilized
Reason: Utilized.

Land

Land/Offutt Comm. Annex No.
Property #: 18199720041
Fed Reg Date: 08/21/1998
Silver Creek Co: Nance NE 68663–
Status: Unutilized
Reason: Asbestos in underground bunker.

New Hampshire

Building

Bldg. 127
Property #: 18199320057
Fed Reg Date: 08/21/1998
New Boston Air Force Station
Amherst Co: Hillsborough NH 03031–1514
Status: Excess
Reason: Ongoing installation mission consideration.

Army

Alaska

Building

Bldg. 47799
Property #: 21199810256
Fed Reg Date: 12/25/1998
Fort Richardson
Ft. Richardson AK 99505–6500
Status: Excess
Reason: Reutilized.

Army

Georgia

Building

Bldg. 4090
Property #: 21199630007
Fed Reg Date: 12/25/1998
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Status: Underutilized
Reason: Plan to utilize as a museum.

Kansas

Building

Bldg. P–295
Property #: 21199810296
Fed Reg Date: 12/25/1998
Fort Leavenworth
Leavenworth Co: Leavenworth KS 66027–
Status: Unutilized
Reason: Reutilized.

Missouri

Building

Bldgs. 1367, 1368, 1371, 137
Property #: 21199820173
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Reason: Reutilized.

Bldg. 4970
Property #: 21199820185
Fed Reg Date: 12/25/1998
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Reason: Reutilized.

Army

New Mexico

Building

Bldg. 1310
Property #: 21199730304
Fed Reg Date: 12/25/1998
White Sands Missile Range
White Sands CO: Dona Ana NM 88002–
Status: Unutilized
Reason: Withdrawn.

New York

Building

Bldg. T–2215
Property #: 21199840161
Fed Reg Date: 11/20/1998
Fort Drum
Co: Jefferson NY 13602–
Status: Unutilized
Reason: Reutilization.

Bldg. T–2216
Property #: 21199840162
Fed Reg Date: 11/20/1998
Fort Drum
Co: Jefferson NY 13602–
Status: Unutilized
Reason: Reutilization.

North Carolina

Land

.92 Acre—Land
Property #: 21199610728
Fed Reg Date: 12/25/1998
Military Ocean Terminal,
Sunny Point
Southport Co: Brunswick NC 28461–5000
Status: Underutilized
Reason: Contains well owned by Town; within an explosive buffer z.

Army

North Carolina

Land

10 Acre—land
Property #: 21199610729
Fed. Reg. Date: 12/25/1998
Military Ocean Terminal,
Sunny Point
Southport Co: Brunswick NC 28461–5000
Status: Underutilized
Reason: within an explosives buffer zone.

257 Acre—land
Property #: 21199610730
Fed. Reg. Date: 12/25/1998
Military Ocean Terminal,
Sunny Point
Southport Co: Brunswick NC 28461–5000
Status: Underutilized
Reason: within an explosives buffer zone.

24.83 acre—Tract of Land
Property #: 211996200685
Fed. Reg. Date: 12/25/1998
Military Ocean Terminal,
Sunny Point
Southport Co: Brunswick NC 28461–5000
Status: Underutilized
Reason: Explosive Buffer Zone.

Texas

Building

Bldg. P–2000, Fort Sam Houst
Property #: 211999220389
Fed. Reg. Date: 12/25/1998
San Antonio Co: Bexar TX 78234–5000
Status: Underutilized
Reason: Area programmed for future use.

Bldg. P–2001, Fort Sam Houst
Property #: 21199220390
Fed. Reg. Date: 12/25/1998
San Antonio Co: Bexar TX 78234–5000
Status: Underutilized
Reason: Area programmed for future use.

Army

Texas

Building

Bldg. T–189, Fort Sam Houst
Property #: 21199220401
Fed. Reg. Date: 12/25/1998
San Antonio Co: Bexar TX 78234–5000
Status: Underutilized
Reason: Area programmed for future use.

Bldg. S–1461
Fort Sam Houston
Property #: 21199610772
Fed. Reg. Date: 12/25/1998
Co: Bexar TX 78234–5000
Status: Unutilized
Reason: being utilized.

Land

Vacant Land, Fort Sam Housto
Property #: 21199220438
Fed. Reg. Date: 12/25/1998
All of Block 1800, Portions of Blocks 1900, 3100, and 3200
San Antonio Co: Bexar TX 78234–5000
Status: Undutilized
Reason: Clean-up process.

COE

California

Building

Santa Fe Flood Control Basin
Property #: 31199011298
Fed. Reg. Date: 08/21/1998
Irwindale Co: Los Angeles CA 91706–
Status: Unutilized
Reason: Needed for contract personnel.

COE

Illinois

Building

Bldg. 7
Property #: 31199010001
Fed. Reg. Date: 08/21/1998
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability.

Bldg. 6
Property #: 31199010002
Fed. Reg. Date: 08/21/1998
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability.

Bldg. 5
Property #: 31199010003
Fed. Reg. Date: 08/21/1998
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability.

Bldg. 4
Property #: 31199010004
Fed. Reg. Date: 08/21/1998
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability.

Bldg. 3
Property #: 31199010005
Fed. Reg. Date: 08/21/1998
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability.

COE

Illinois

Building

Bldg. 2
Property #: 31199010006
Fed Reg Date: 08/21/1998
Ohio River Locks & Dam No. 253
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability.

Bldg. 1
Property #: 31199010007
Fed Reg Date: 08/21/1998
Ohio River Locks & Dam No. 35
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability.

Land

Lake Shelbyville
Property #: 31199240004
Fed Reg Date: 08/21/1998
Shelbyville Co: Shelby & Moultrie, IL 62565–9804
Status: Unutilized
Reason: Disposal action initiated.

Kentucky

Land

Portion of Tract 3300
Property #: 31199830002
Fed Reg Date: 11/13/1998
Fishtrap Lake Co: Pike KY 41548–
Status: Excess
Reason: encroachment.

COE

North Dakota

Land

Lot 3/0.16 acre
Property #: 31199720003
Fed Reg Date: 08/21/1998
Snake Creek Cabin Site/Tract C272A
Co: McLean ND
Status: Unutilized
Reason: To be sold/encroachment.

Ohio

Building

Bldg.-Berlin Lake
Property #: 31199640001
Fed Reg Date: 08/21/1998
7400 Bedell Road
Berlin Center Co: Mahoning OH 44401–9797
Status: Unutilized
Reason: utilized as construction office.

Oklahoma

Land

Land
Property #: 31199820002
Fed Reg Date: 08/21/1998
Lake Texoma
Co: Bryan OK
Status: Excess
Reason: To be conveyed to Rural Sewer District.

Pennsylvania

Building

Tract 302B
Property #: 31199430017
Fed Reg Date: 08/21/1998
Grays Landing Lock & Dam Project
Old Glassworks Co: Greene PA 15338–
Status: Unutilized
Reason: To be transferred to County.

COE

Pennsylvania

Building

Tract 353
Property #: 31199430019
Fed Reg Date: 08/21/1998
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Status: Unutilized
Reason: To be transferred to Borough.

Tract 403A
Property #: 31199430021
Fed Reg Date: 08/21/1998
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Status: Unutilized
Reason: To be transferred to Borough.

Tract 403B
Property #: 31199430022
Fed Reg Date: 08/21/1998
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Status: Unutilized
Reason: To be transferred to Borough.

Tract 403C
Property #: 31199430023
Fed Reg Date: 08/21/1998
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Status: Unutilized
Reason: To be transferred to Borough.

Tract 434
Property #: 31199430024
Fed Reg Date: 08/21/1998
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Status: Unutilized
Reason: To be transferred to Borough.

Pennsylvania

Building

Tract No. 224
Property #: 31199440001
Fed Reg Date: 8/21/1998
Grays Landing Lock & Dam Project
Greensboro Co: Green PA 15338–
Status: Unutilized
Reason: Disposal action initiated.

Land

East Branch Clarion River La
Property #: 31199011012
Fed Reg Date: 8/21/1998
Wilcox Co: Elk PA
Status: Underutilized
Reason: Location near damsite.

Dashields Locks and Dam
Property #: 31199210009
Fed Reg Date: 8/21/1998
(Glenwillard, PA)
Crescent Twp. Co: Allegheny PA 15046–0475
Status: Unutilized
Reason: Leased to Township.

Texas

Land

Parcel #222
Property #: 31199010421
Fed Reg Date: 8/21/1998
Lake Texoma
Co: Grayson TX
Status: Excess
Reason: Landfill to be investigated.

COE

Wisconsin

Building

Former Lockmaster's Dwelling
Property #: 31199011526
Fed Reg Date: 8/21/1998
DePere Lock
100 James Street
De Pere Co: Brown WI 54115–
Status: Unutilized
Reason: In negotiation for transfer to the State.

DOT

Alaska

Building

Bldgs. 001A&B
Property #: 87199720001
Fed Reg Date: 8/21/1998
Spruce Cape Loran Station
Kodiak Co: Kodiak Is. Bor. AK 99615–
Status: Excess
Reason: Currently utilized by Navy.

Georgia

Land

Land—St. Simons Boathouse
Property #: 87199540003
Fed Reg Date: 8/21/1998
Status: Unutilized
Reason: Reversionary clause in deed.

DOT

Maine

Building

Mount Desert Rock Light
Property #: 87199240023
Fed Reg Date: 8/21/1998
U.S. Coast Guard
Southwest Harbor Co: Hancock ME 04679–
Status: Unutilized
Reason: No electrical service.

Little River Light
Property #: 87199240026

Fed Reg Date: 8/21/1998
U.S. Coast Guard
Cutler Co: Washington ME
Status: Unutilized
Reason: Well contamination.

Burnt Island Light
Property #: 87199240027
Fed Reg Date: 8/21/1998
U.S. Coast Guard
Southport Co: Lincoln ME 04576–
Status: Unutilized
Reason: Under a historic lease.

Massachusetts

Building

Keepers Dwelling
Property #: 87199240024
Fed Reg Date: 8/21/1998
Cape Ann Light, Thachers Island
U.S. Coast Guard
Rockport Co: Essex MA 01966–
Status: Unutilized
Reason: Under a lease agreement.

Assistant Keepers Dwelling
Property #: 87199240025
Fed Reg Date: 8/21/1998
Cape Ann Light, Thachers Island
U.S. Coast Guard
Rockport Co: Essex MA 01966–
Status: Unutilized
Reason: Under a lease agreement.

DOT

Texas

Building

Brownsville Urban System (Grantee)
Property #: 87199010003
Fed Reg Date: 08/21/1998
700 South Iowa Avenue
Brownsville Co: Cameron TX 78520–
Status: Unutilized
Reason: City of Brownsville needs the property.

Energy

Idaho

Building

Bldg. CFA–613
Property #: 41199630001
Fed Reg Date: 08/21/1998
Central Facilities Area
Idaho National Engineering Lab
Scoville Co: Butte ID 83415–
Status: Unutilized
Reason: being reviewed for its historical status.

GSA

Alaska

Building

10 Office Buildings
Property #: 54199710002
Fed Reg Date: 08/28/1998
Anchorage Native Medical Center
255 Gambell St.
Anchorage Co: Anchorage AK 99501–
Status: Surplus
GSA Number: 9–F–AK–750
Reason: City interest.

GSA

Alaska

Building

3 Storage Buildings
Property #: 54199710003
Fed Reg Date: 08/28/1998
Anchorage Native Medical Center
255 Gambell St.
Anchorage Co: Anchorage AK 99501–
Status: Surplus
GSA Number: 9–F–AK–750
Reason: City interest.

1 Hospital
Property #: 54199710004
Fed Reg Date: 08/28/1998
Anchorage Native Medical Center
255 Gambell St.
Anchorage Co: Anchorage AK 99501–
Status: Surplus
GSA Number: 9–F–AK–750
Reason: City interest.

California

Building

Vallejo Federal Building
Property #: 54199740014
Fed Reg Date: 08/28/1998
823 Marin Ave.
Vallejo Co: Solano CA
Status: Excess
GSA Number: 9–G–CA–1502
Reason: Calif. Desert Pro. Act.

Land

(P) Camp Elliott
Property #: 54199310008
Fed Reg Date: 08/28/1998
Rosedale Tract
San Diego Co: San Diego CA
Status: Surplus
GSA Number: 9–GR(6)–CA–694A
Reason: Sale pending.

GSA

Colorado

Land

Erie Substation
Property #: 54199740002
Fed Reg Date: 08/28/1998
Hwy 87
Co: Weld CO
Status: Excess
Reason: Advertised.

Connecticut

Building

USCG Cutter Redwood Pier
Property #: 54199810017
Fed Reg Date: 08/28/1998
New London CT 06320–6002
Status: Excess
GSA Number: 1–U–CT–540
Reason: Park interest.

Georgia

Building

Phil Landrum Federal Bldg.
Property #: 54199810008
Fed Reg Date: 08/28/1998
35 W. Church Street
Jasper Co: Pickens GA 30143–
Status: Surplus
GSA Number: 4–G–GA–854
Reason: Public benefit interest.

Land

NARACS Site
Property #: 54199730002
Fed Reg Date: 08/28/1998
North side of GA Hwy 36,
5 mi. west of I–75
Co: Lamar GA
Status: Excess
GSA Number: 4–U–GA–0855
Reason: County interest.

GSA

Idaho

Land

160 acres
Property #: 54199720008
Fed Reg Date: 08/28/1998
Idaho National Engineering Lab
Co: Jefferson ID 83415–
Status: Surplus
GSA Number: 9–B–ID–542
Reason: sale to County pending.

Illinois

Building

Radar Communication Link
Property #: 54199820013
Fed Reg Date: 08/28/1998
½ mi east of 116th St.
Co: Will IL
Status: Excess
GSA Number: 2–U–IL–696
Reason: negotiated sale.

Natl Weather Svc. Meter. Obs
Property #: 54199820014
Fed Reg Date: 08/28/1998
Morris Blacktop Rd.
Miller Township Co: LaSalle IL 61341–
Status: Excess
GSA Number: 1–C–IL–708
Reason: homeless interest.

Indiana

Land

Portion
Property #: 54199620002
Fed Reg Date: 08/28/1998
Bureau of Prisons Vigo Farm
Linden Twp Co: Vigo IN
Status: Excess
GSA Number: 2–J–IN–507C
Reason: County is interested in negoatiated sale.

GSA

Iowa

Building

Naval Family Housing
Property #: 54199720009
Fed Reg Date: 08/28/1998
23-Units
Waverly Co: Bremer IA 50677–
Status: Excess
GSA Number: 7–D–LA–0463B
Reason: Federal need.

Maine

Land

GWEN Site (Patten)
Property #: 18199640018
Fed Reg Date: 08/28/1998

Loring AFB
Stacyville Co: Herseytown ME 04742–
Status: Excess
GSA Number: 1–D–ME–630
Reason: advertised.

Maryland

Building

Duplex House w/detached gara
Property #: 54199830007
Fed Reg Date: 08/21/1998
710 Trail Ave.
Frederick MD 21702–5000
Status: Excess
GSA Number: 4–F–MD–0597
Reason: homeless interest.

Cheltenham Naval Comm. Dtchm
Property #: 77199330010
Fed Reg Date: 12/25/1998
9190 Commo Rd., AKA 7700 Redman Rd.
Clinton Co: Prince George MD 20397–5520
Status: Excess
GSA Number: 4–N–MD–544A
Reason: public benefit interest.

GSA

Michigan

Building

Detroit Job Corps Center
Property #: 54199510002
Fed Reg Date: 08/28/1998
10401 E. Jefferson & 1438 Garland; 1265 St. Clair
Detroit Co: Wayne MI 42128–
Status: Surplus
GSA Number: 2–L–MI–757
Reason: Education application.

Parcel 2
Property #: 54199730012
Fed Reg Date: 08/28/1998
Tawas Point Lighthouse
East Tawas Co: Iosco MI
Status: Excess
GSA Number: 1–U–MI–500
Reason: historic discount.

S. Haven Keeper's Dwelling
Property #: 54199740012
Fed Reg Date: 08/28/1998
91 Michigan Ave.
South Haven Co: Van Buren MI 49090–
Status: Excess
GSA Number: 1–U–MI–475C
Reason: Negotiated sale to City.

Eagle Harbor Lighthouse
Property #: 54199740018
Fed Reg Date: 08/28/1998
Rt. 26
Eagle Harbor Co: Keweenaw MI 44950–
Status: Excess
GSA Number: 1–U–MI–420A
Reason: Special legislation.

Land

Parcel 3, Parcel B
Property #: 54199730013
Fed Reg Date: 08/28/1998
East Tawas Co: Iosco MI
Status: Excess
GSA Number: 1–U–MI–500
Reason: negotiated sale.

GSA

Montana

Building

Forsyth Tech Operations Site
Property #: 18199610001
Fed Reg Date: 08/28/1998
Forsyth Co: Rosebud MT 59327–
Status: Surplus
GSA Number: 7–D–MT–609
Reason: Educational interest.

Missoula Fireweather Site
Property #: 54199830012
Fed Reg Date: 10/23/1998
Highway 83
Missoula MT: MT 59801–
Status: Surplus
GSA Number: 7–C–MT–610
Reason: Educational interest.

Nebraska

Building

NE City Repair/Storage Garag
Property #: 54199830003
Fed Reg Date: 08/28/1998
HWY 2
Nebraska City Co: Otoe 68410–
Status: Excess
GSA Number: 7–D–NE–525
Reason: Park interest.

New Hampshire

Land

Land—7.97
Property #: 21199710118
Fed Reg Date: 08/28/1998
Army Reserve Center,
Industrial Park
Belmont Co: Belnap NH
Status: Excess
GSA Number: 1–D–NH–0489
Reason: Advertised.

GSA

New Jersey

Building

Gibbsboro Air Force Station
Property #: 54199810018
Fed Reg Date: 08/28/1998
Gibbsboro Co: Camden NJ
Status: Excess
GSA Number: 1–D–NJ–603B
Reason: public benefit interest.

New York

Building

Reserve Center
Property #: 21199710239
Fed Reg Date: 08/28/1998
Sgt. H. Grover H. O'Connor USARC
303 N. Lackawanna Street
Wayland Co: Steuben MT 14572–
Status: Unutilized
GSA Number: 1–D–NY–866
Reason: advertised.

Land

Galeville Army Training Site
Property #: 21199510128
Fed Reg Date: 08/28/1998
Shawangunk Co: Ulster NY 12589–
Status: Excess
GSA Number: 2–D–NY–807
Reason: Federal need.

North Carolina

Building

Federal Building
Property #: 54199730022
Fed Reg Date: 08/28/1998
146 North Main Street
Rutherfordton Co: Rutherford NC 28139–
Status: Excess
GSA Number: 4–G–NC–727
Reason: Homeless interest.

GSA

North Carolina

Building

Tarheel Army Missile Plant
Property #: 54199820002
Fed Reg Date: 08/28/1998
Burlington Co: Alamance NC 27215-
Status: Excess
GSA Number: 4–D–NC–593
Reason: Advertised.

Ohio

Building

Zanesville Federal Building
Property #: 54199520018
Fed Reg Date: 08/28/1998
65 North Street
Zanesville Co: Muskingum OH
Status: Excess
GSA Number: 2–G–OH–781A
Reason: Public benefit interest from County.

Keeper's Dwelling & Shed
Property #: 54199740015
Fed Reg Date: 08/28/1998
110 Wall Street
Huron OH 55802–
Status: Excess
GSA Number: 1–U–OH–800
Reason: Negotiated sale.

Oklahoma

Building

Fed. Bldg./Courthouse
Property #: 54199820009
Fed Reg Date: 08/28/1998
N. Washington & Broadway Streets
Ardmore Co: Carter OK 73402–
Status: Excess
GSA Number: 7–G–TX–559
Reason: Federal need.

GSA

Oregon

Building

Gus Solomon U.S. Courthouse
Property #: 54199730023
Fed Reg Date: 08/28/1998
620 SW Main Street
Portland Co: Multnomah OR 97205–
Status: Underutilized
GSA Number: 7–G–OR–724
Reason: Pending lease with County government.

Land

Portion, Astoria Field Office
Property #: 54199640015
Fed Reg Date: 08/28/1998
Via Hwy 30
Astoria Co: Clatsop OR 97103–
Status: Excess
GSA Number: 9–D–OR–447F

Reason: State interest.

Pennsylvania

Building

Federal Office Building
Property #: 54199730004
Fed Reg Date: 08/28/1998
1421 Cherry Street
Philadelphia PA 19107–
Status: Surplus
GSA Number: 4–G–PA–776
Reason: Negotiated sale in progress.

Airport Surv. Radar Site
Property #: 54199810010
Fed Reg Date: 08/28/1998
Beacon Road
New Cumberland Co: Cumberland PA 17070–
Status: Surplus
GSA Number: 4–U–PA–783
Reason: Written expression of interest.

GSA

Puerto Rico

Land

La Hueca—Naval Station
Property #: 54199420006
Fed Reg Date: 08/28/1998
Roosevelt Roads
Vieques PR 00765–
Status: Excess
Reason: Federal interest.

Tennessee

Building

Federal Building
Property #: 54199730010
Fed Reg Date: 08/28/1998
130 Main Street
Carthage Co: Smith TN 37030–
Status: Excess
GSA Number: 4–G–TN–643
Reason: Homeless interest.

Texas

Building

Airport Surv. Radar Site Asr
Property #: 54199830005
Fed Reg Date: 08/28/1998
3203 Glade Road
Colleyville Co: Tarrant TX 76034–
Status: Excess
GSA Number: 7–U–TX–1054
Reason: advertised.

Land

Lots 6, 7, & 8 (Block 7)
Property #: 54199820007
Fed Reg Date: 08/28/1998
River Ridge Subdivision
14100 block of River Rock Dr.
Corpus Christi Co: Nueces TX 78410–
Status: Surplus
GSA Number: 7–J–TX–1052
Reason: Advertised.

GSA

Virginia

Building

National Weather Service
Property #: 54199710001
Fed Reg Date: 08/28/1998
Route 3
Volens Co: Halifax VA
Status: Excess
GSA Number: 4–C–VA–713
Reason: Advertised for public sale.

Washington

Building

Vancouver Info Center
Property #: 54199740011
Fed Reg Date: 08/28/1998
Interstate Rt 5
Vancouver Co: Clark WA 98663–
Status: Excess
GSA Number: 9–GR–WA–514E
Reason: Homeless Interest.

Land

Sandpoint Control Tower
Property #: 54199440003
Fed Reg Date: 08/28/1998
Near 7600 Sandpoint Way, NE
Seattle Co: King WA 98115–
Status: Excess
GSA Number: 9–C–WA–1069
Reason: City interest—negotiated sale probable.

West Virginia

Land

East Williamson
Property #: 54199820012
Fed Reg Date: 08/28/1998
Segment 7
Williamson Co: Mingo WV 25661–
Status: Excess
GSA Number: 4–D–WV–528
Reason: Public benefit interest.

Interior

California

Building

Visitor Motel—Upper Kaweah
Property #: 61199720007
Fed Reg Date: 09/11/1998
Sequoia National Park
Three Rivers CA 93271–
Status: Unutilized
Reason: scheduled for demolition.

Maryland

Building

Former Physioc Property
Property #: 61199820005
Fed Reg Date: 09/11/1998
NPS Tract 402–29
Jugtown Co: Washington MD 21713–
Status: Excess
Reason: scheduled for demolition.

Massachusetts

Building

Ziegler House
Property #: 61199830001
Fed Reg Date: 10/02/1998
National Park, Virginia Road
Lincoln Co; Middlesex MA 10773–
Status: Unutilized
Reason: removal by FNP to eliminate damage to historic/natural rs.

Mississippi

Building

Quarters #196
Property #: 61199820008
Fed Reg Date: 09/11/1998
Dancy District, Natchez Tract
Mantee Co: Webster MS 39751–
Status: Excess
Reason: scheduled for demolition.

Navy

Florida

Land

13.358 acres
Property #: 77199820141
Fed Reg Date: 12/25/1998
Naval Air Station
Hwy 98 & Perimeter Drive
Pensacola Co: Escambia FL 32508–
Status: Unutilized
Reason: Federal Aid Project.

Maine

Building

Bldg. 376, Naval Air Station
Property #: 77199320011
Fed Reg Date: 12/25/1998
Topsham Annex
Topsham Co: Sagadahoc ME
Status: Unutilized
Reason: Federal need.

Bldg. 383
Property #: 77199720025
Fed Reg Date: 12/25/1998
Topsham Annex, Naval Air Station
Brunswick ME 04011–
Status: Unutilized
Reason: Pending special legislation.

Bldg. 382
Property #: 77199720026
Fed Reg Date: 12/25/1998
Topsham Annex, Naval Air Station
Brunswick ME 04011–
Status: Unutilized
Reason: Pending special legislation.

Bldg. 381
Property #: 77199720027
Fed Reg Date: 12/25/1998
Topsham Annex, Naval Air Station
Brunswick ME 04011–
Status: Unutilized
Reason: Pending special legislation.

Navy

Ohio

Building

Naval & Marine Corps Res. Cn
Property #: 77199320012
Fed Reg Date: 12/25/1998
315 East LaClede Avenue
Youngstown OH
Status: Unutilized
Reason: Returning property to the City.

Puerto Rico

Building

Bldgs. 501 & 502
Property #: 77199530007
Fed Reg Date: 12/25/1998
U.S. Naval Radio Transmitter Facility
State Road No. 2
Juana Diaz PR 00795–
Status: Underutilized
Reason: Department of Defense interest.

Virginia

Building

Naval Medical Clinic

Property #: 77199010109
Fed Reg Date: 12/25/1998
6500 Hampton Blvd.
Norfolk Co: Norfolk VA 23508–
Status: Unutilized
Reason: Planned for expansion space.

Land

Naval Base
Property #: 77199010156
Fed Reg Date: 12/25/1998
Norfork Co: Norfolk VA 23508–
Status: Unutilized
Reason: Identified for use in developing admin. office space.

Navy

Virginia

Land

Land—CD area
Property #: 77199830022
Fed Reg Date: 12/25/1998
Naval Base Norfolk
Norfolk VA 23511–2797
Status: Unutilized
Reason: outlease to Federal Credit Union.

VA

Illinois

Land

VA Medical Center
Property #: 97199010082
Fed Reg Date: 09/11/1998
3001 Green Bay Road
North Chicago Co: Lake IL 60064–
Status: Underutilized
Reason: Fully used as a staging area for major construction project.

Indiana

Building

Bldg. 24 VAMC
Property #: 97199230005
Fed Reg Date: 09/11/1998
East 38th Street
Marion Co: Grant In 46952–
Status: Underutilized
Reason: Currently utilized.

Bldg. 122
Property #: 97199810006
Fed Reg Date: 09/11/1998
VA Northern Indiana Health
Care System
Marion Campus, 1700 East
38th Street
Marion Co: Grant IN 46953–
Status: Unutilized
Reason: Fully utilized by construction contractor.

VA

Iowa

Land

38 acres
Property #: 97199740001
Fed Reg Date: 09/11/1998
VA Medical Center
1515 West Pleasant St.
Knoxville Co: Marion IA 50138–
Status: Unutilized
Reason: Enhanced-Use Legislation potential.

Michigan

Land

VA Medical Center
Property #: 97199010015
Fed Reg Date: 09/11/1998
5500 Armstrong Road
Battle Creek Co: Calhoun MI 49016–
Status: Underutilized
Reason: Being used for patient and program activities.

New York

Land

VA Medical Center
Property #: 97199010017
Fed Reg Date: 09/11/1998
Fort Hill Avenue
Canandaigua Co: Ontario NY 14424–
Status: Underutilized
Reason: 13 acres/Canandaigua School Dist., 14.5 acres landlocked.

Pennsylvania

Land

Land No. 645
VA Medical Center
Property #: 97199010016
Fed Reg Date: 09/11/1998
New Castle Road
Butler Co: Butler PA 16001–
Status: Underutilized
Reason: Used as natural drainage for facility property.

VA

Pennsylvania

Land

Land No. 645
Property #: 97199010080
Fed Reg Date: 09/11/1998
VA. Medical Center
Highland Drive
Pittsburgh Co: Allegheny PA 15206–
Status: Unutilized
Reason: Property is essential to security and safety of patients.

Land—34.16 acres
Property #: 97199340001
Fed Reg Date: 09/11/1998
VA Medical Center
1400 Black Horse Hill Road
Coatesville Co: Chester PA 19320–
Status: Underutilized
Reason: needed for mission related functions.

South Carolina

Building

Bldg. 10
Property #: 97199830001
Fed Reg Date: 10/23/1998
Veterans Affairs Medical
Center
6439 Garners Ferry Rd.
Columbia Co: Richland SC 29209–1639
Status: Underutilized
Reason: Subject of leasing negotiations.

Tennessee

Land

44 acres
Property #: 97199740003
Fed Reg Date: 09/11/1998
VA Medical Center
3400 Lebanon Rd.
Murfreesboro Co: Rutherford TN 37129–
Status: Underutilized
Reason: Enhanced-Use lease agreement pending.

VA

Wisconsin

Building

Bldg. 2
Property #: 97199830002
Fed Reg Date: 10/23/1998
VA Medical Center
5000 West National Ave.
Milwaukee WI 53295–
Status: Underutilized
Reason: Subject of leasing negotiations.

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federal register

Friday
February 12, 1999

Part III

Department of Agriculture

Forest Service

36 CFR Part 212

Administration of the Forest Development Transportation System: Temporary Suspension of Road Construction and Reconstruction in Unroaded Areas; Interim Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 212

[0596–AB68]

Administration of the Forest Development Transportation System: Temporary Suspension of Road Construction and Reconstruction in Unroaded Areas

AGENCY: Forest Service, USDA.

ACTION: Adoption of interim rule.

SUMMARY: This final interim rule temporarily suspends decisionmaking regarding road construction and reconstruction in many unroaded areas within the National Forest System. Its intended effect is to retain resource management options in those unroaded areas subject to suspension from the potentially adverse effects associated with road construction, while the Forest Service develops a revised road management policy. The interim rule also will provide time to refocus attention on the larger issues of public use, demand, expectations, and funding surrounding the National Forest Transportation System. The temporary suspension of road construction and reconstruction will expire upon the adoption of a revised road management policy or 18 months from the effective date of this final interim rule, whichever is sooner.

DATES: This rule is effective March 1, 1999.

FOR FURTHER INFORMATION CONTACT: Gerald (Skip) Coghlan, Engineering Staff, 202–205–1400 or Rhey Solomon, Ecosystem Management Coordination Staff, 202–205–0939.

SUPPLEMENTARY INFORMATION: On January 28, 1998, the Forest Service published an Advance Notice of Proposed Rulemaking (ANPR) (63 FR 4350), giving notice of its intention to revise its regulations for managing roads within the National Forest Transportation System and to address changes in how the road system is funded, developed, used, and maintained. On that same date, at 63 FR 4351, the agency published a proposed interim rule to temporarily suspend road construction and reconstruction in certain roadless areas until new and improved scientific and analytical tools are developed to better evaluate the need for and effects of roads in sensitive areas. Comment was invited.

In response to requests from various individuals, organizations, and elected officials, on February 27, 1998, the agency extended the public comment period on the proposed interim rule for an additional 30 days (63 FR 9980) and announced that it would hold 25 open houses to receive comments on the ANPR and proposed interim rule. An additional six open houses were held in response to local requests. An estimated 2,300 people attended these meetings generating approximately 1,800 comments. Over 53,000 letters, postcards, oral comments, and e-mail messages concerning the proposal were submitted during the 60-day comment period. Comments were received from all 50 states, the District of Columbia, and Puerto Rico. Most comments came from California (14,000 individuals or 26 percent of the total responses) followed by Montana, Oregon, Colorado, Illinois, Idaho, Pennsylvania, Alaska, and Georgia. Of the total written comments submitted on the proposed interim rule, 96 percent were from individuals. Responses from conservation oriented groups accounted for another one percent of comments analyzed, while the remaining three percent were from recreation user groups, wood products companies, other commodity groups, and county, State, and Federal agencies.

Summary of Public Comments

The variety of comments received represented widely differing perceptions and interpretations of the proposed interim rule and reflected regional and specific concerns. However, the majority of concerns fit into two categories: (1) A belief that the interim rule is a policy designed to preserve unroaded areas rather than a temporary measure to suspend road construction and reconstruction in unroaded areas, and (2) the interim rule will lead to fewer roads in the National Forest Transportation System and thus reduce access. Based on the perception that the proposed interim rule was a roadless-area policy, many comments focused on the positive and negative environmental, social, and economic attributes of unroaded areas.

The terms ''wilderness'' and ''roadless areas'' were often used interchangeably by respondents. Many respondents asked the agency to designate additional wilderness and suggested that exemptions and other stipulations in the proposed interim rule were concessions to special interest commodity user groups that allegedly influence Forest Service policy. Generally, those supporting the proposed interim rule primarily commented on specific aspects of the proposal, indicating that its measures would protect the environment. However, many respondents that supported the rule opposed the exemption for forest plans that are in or have completed the administrative appeals process and the exemption to the Northwest Forest Plan. Those opposed wrote that the acreage requirements for suspensions or exemptions described in the proposed interim rule were inappropriate. Many respondents, who objected to the proposed interim rule, perceived it to be part of an ongoing process that excludes the public from legitimate uses of public lands. These respondents thought that the Forest Service multiple-use mandate was being substantially eroded.

Most opponents of the proposed interim rule wrote that it is fundamentally unnecessary. They asserted that a short-term suspension of road construction and reconstruction would have no positive or lasting effects. They commented less on specific parts of the proposal than on the general nature of their resource management concerns and perceived violations of law. Many expressed concern about the possible economic consequences to local communities, including loss of jobs, reduced Federal receipts to counties, and loss of road infrastructure.

Further analysis of public comments identified a number of issues that fit into one of the following categories: (1) Need for and purpose of the interim rule, (2) compliance with laws and regulations, (3) social and economic consequences, (4) environmental consequences, (5) public participation, and (6) suggested revisions to the proposed interim rule. The first five of these categories reflect public concern for the effects of implementing the proposed interim rule, while the last reflects concerns directly related to provisions of the proposed interim rule. A summary of these issues and the Department's response to them follows.

Comments About the Need for and Purpose of Action

Issue 1: The need for an interim rule is unclear. Many respondents doubted the need for an interim rule, others cited the environmental, social, or intrinsic values of unroaded areas, or the sheer size of the National Forest Transportation System, as reasons an interim rule is necessary. Some thought that an interim rule would provide a necessary ''time-out'' to allow for careful consideration of a long-term transportation system policy, while others wrote that a long-term policy could be developed without an interim rule. The latter cited the fact that 434 miles of new roads were constructed in 1997 and, because the National Forest

Transportation System includes 373,000 miles of classified roads, additional road construction would not add to problems associated with Forest Service roads.

Response. The interim rule will suspend very little overall planned road construction and reconstruction during the 18-month period and will have a negligible effect on user access and the environment. However, the suspension will apply to unroaded areas that are ecologically important where road construction and reconstruction could have disproportionate and long-term impacts. Therefore, the Department believes a temporary suspension is beneficial and will provide time to develop a revised road management policy.

Issue 2: The interim rule appears to violate the multiple-use mandate. The connection made between road access and use of National Forest System lands, whether for commodity extraction or recreation, led many respondents to broadly discuss the purposes of National Forest System and other public lands, the concept of multiple-use, and society's perceived changing values. They wrote that the national forests belong to and should be protected for everyone, not just those seen as motivated by short-term financial gain. These respondents argued that unroaded areas are the only remaining areas where ecosystem integrity can be preserved; a benefit, in their opinion, to the land and to future generations and satisfying multiple-use in the long-term. Others wrote that the national forests were set aside by the Federal Government to provide a sustained yield of natural resources, that these lands should continue to be managed for that purpose, and that the Forest Service is not sufficiently following that mandate by adopting the interim rule.

Some respondents held that national forest management must balance society's need for commodities, like lumber, beef, and minerals, with protection of water, air, and wilderness recreation opportunities. A few suggested that the multiple-use mandate is not valid because increased human demands for natural resources have exceeded the land's ability to provide all things for all people.

Response. The proposed interim rule does not alter the statutory multiple-use mandate nor the agency's compliance with that mandate. Lands administered by the Forest Service will continue to be managed for a balance of resource uses according to land and resource management plans (forest plans), which are prepared in compliance with the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528) and the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*). The proposed interim rule is temporary, only addresses road construction and reconstruction within certain unroaded areas, and does not restrict multiple-uses, although some projects and activities dependent on road construction or reconstruction will be affected. Also, these unroaded areas are not the only areas of the National Forest System where lands are managed to protect their natural state; for example, 35 million acres are in congressionally designated wilderness areas.

Issue 3: The interim rule will expand the Wilderness Preservation System. Some respondents were concerned that the proposed interim rule is a ''massive land grab'' that will create de facto wilderness in areas otherwise designated for multiple-use management. Some respondents wrote that the proposed interim rule is an inappropriate attempt to create additional wilderness without designation by the Congress or endorsement by the general public. They suggested that the proposed interim rule would actually expand the Wilderness Preservation System. Such responses usually were accompanied by comments that land would be excluded from other uses, at the expense of public access, for the use of a select few.

However, some respondents asked that unroaded areas be given full protection under the Wilderness Act of 1964. These respondents wrote that unroaded areas are the last vestiges of a once vast area, which have somehow escaped inclusion in the Wilderness Preservation System. They suggested that there are not enough designated wilderness areas and advocated using unroaded areas to buffer designated wilderness areas from human activities or, ultimately, to include them in the Wilderness Preservation System. Requests for protection of specific unroaded areas often accompanied the general comments on unroaded area protection.

Response. The proposed interim rule is not a policy to expand the Wilderness Preservation System. It will temporarily suspend road construction and reconstruction in some unroaded areas; it sets no limits on other activities, including timber harvest which may be accomplished without the construction or reconstruction of roads. Recommendations for wilderness area designation and management standards and guidelines for roadless areas are decisions made during the forest planning process and are subject to special procedures under the Wilderness Act. The proposed interim rule does not affect forest planning or land allocation decisions made in the land and resource management plans. It would be inappropriate and infeasible for the Secretary to recommend new wilderness areas in conjunction with this interim rule.

Issue 4: The merits of a new roadless area review are of great concern and interest. The possibility of a new inventory of roadless areas and roads generated more responses than any other topic. Most supporters of the proposed interim rule suggested that the Forest Service expand its suspension of road construction and reconstruction and protect what they view are irreplaceable resources. Some opined that the Roadless Area Review and Evaluation (RARE II), which was prepared in 1979, is an inadequate inventory and should not be used as a basis for identifying roadless areas. Others asked that the suspension not only provide protection of both inventoried and un-inventoried roadless areas, but also that the Forest Service prepare a new inventory.

Response. Road construction and reconstruction in unroaded portions of roadless areas identified in RARE II, as well as those additional roadless areas identified in land and resource management plans, are subject to suspension under the final interim rule. The rule does not change those inventories nor any land allocations made with regard to these lands. The interim rule is not a roadless area inventory process, nor does it propose a new inventory. Land and resource management planning under the National Forest Management Act of 1976 is the established mechanism for determining the need for conducting inventories and facilitating decisionmaking with regard to specific areas.

Comments About Compliance With Laws and Regulations

Issue 5: An environmental impact statement (EIS) should have been prepared. Because the suspension of road construction and reconstruction will be national in scope and was perceived to affect many aspects of forest use, many respondents expressed their expectation that the Forest Service should follow mandated processes of the National Environmental Policy Act (NEPA) and conduct assessments of potential impacts. Some asserted that the agency should have prepared an environmental impact statement before publishing the proposed interim rule.

Response. To determine whether an environmental impact statement is

needed, Forest Service officials have prepared an environmental assessment of the possible effects of implementing the proposed interim rule and alternatives. Based on the analysis, the Chief of the Forest Service has made a Finding of No Significant Impact (FONSI). The FONSI discusses the significance of the environmental consequences of the final interim rule and addresses why an EIS is not required. The environmental assessment is available on the World Wide Web at www.fs.fed.us/news/roads/. Copies are also available upon request by writing the Director of Ecosystem Management Coordination, P.O. Box 96090, Washington, D.C. 20090, or by calling 202–205–0895.

Issue 6: The interim rule appears to violate laws and regulations. Several individuals expressed strong concern about a perceived disregard for natural resource management laws and administrative rulemaking procedures. They wrote that the proposed interim rule violates Constitutional law, including the Fifth and Tenth Amendments that address being deprived of property without compensation and limits of Federal power, respectively. These respondents also alleged violation of various environmental and administrative laws including the Wilderness Act, the National Forest Management Act, the Alaska National Interest Land Conservation Act, the Americans with Disabilities Act, and the Paperwork Reduction Act. Laws most often cited as being violated and the Department's response follows.

The Wilderness Act. Although only Congress may designate wilderness areas, some respondents viewed the proposed interim rule as a step toward circumventing congressional authority. These respondents contend that unroaded lands were released for multiple-use under various wilderness legislation, as well as RARE II, and they see the proposed interim rule as a breach of those laws. Some expressed concern that the proposed interim rule violates release language in State Wilderness Acts, specifically those in Wyoming and Colorado.

Response. The proposed interim rule was not intended as a policy to evaluate or consider National Forest System lands for recommendation as potential wilderness areas. The land and resource planning process under NFMA is the appropriate vehicle for making recommendations for congressional wilderness area designation. The interim rule does not make decisions or recommendations regarding wilderness potential. The interim rule also does not affect activities in unroaded areas except road construction and reconstruction for a temporary period. Unroaded areas released by congress under wilderness statutes are still released for multiple-use management in accordance with the applicable land and resource management plan.

National Forest Management Act (NFMA) Planning. Some respondents indicated that the proposed interim rule alters forest plans without going through the NFMA amendment process. Some also were confused about integration of the proposed interim rule with the forest planning process.

Response. Adoption of the interim rule does not violate NFMA. Together with other applicable laws, NFMA authorizes the Secretary of Agriculture to promulgate regulations governing the administration and management of the National Forest Transportation System and regulations to govern forest plan approval, amendment, and revision (16 U.S.C. 1604, 1608 and 1613). These laws complement the long standing authority of the Secretary to regulate the occupancy and use of national forests (16 U.S.C. 551).

Forest planning and management occur at distinct administrative levels of decisionmaking under the structure established by the NFMA and its implementing regulations. At the programmatic level, and in response to specific public concerns, the Forest Service develops various management options, or alternatives, for an entire national forest. When a land and resource management plan is approved, the project initiation phase begins in which managers propose site-specific actions and assess their environmental consequences and feasibility. The interim rule does not alter the programmatic framework established in land and resource management plans, nor does it amend any plan allocation, standard, or guideline. Although the interim rule may alter the immediate feasibility of some projects, it will not alter the premises on which those projects are based. (For a more detailed discussion of forest plans and project-level decisionmaking see 58 FR 19370–19371.)

Americans with Disabilities Act (ADA). Some respondents were concerned that the proposed interim rule would deny access to National Forest System lands by persons with physical disabilities caused by age, health, or handicaps. Some people rely solely on vehicle access to enjoy their favorite sites and experience the outdoors away from crowded, high-impact camping areas. Respondents wrote that the proposed interim rule could violate the intent of the ADA by denying safe access to the most remote facilities.

Response. Executive branch actions of the Federal government are covered by Title V of the Rehabilitation Act of 1973 and not the Americans with Disabilities Act. A model for the requirements of the ADA, Title V prohibits discrimination in services and employment on the basis of handicap. The proposed interim rule would not violate the letter or the spirit of the ADA. It is possible that users may be denied new road access into some areas because of the temporary suspension of road construction in unroaded areas; however, this would affect all users equally.

Alaska National Interest Land Conservation Act (ANILCA). A number of respondents claim ANILCA will be violated by denying access to private land in-holdings or limiting access through unroaded areas. These respondents also believe that the proposed interim rule violates ANILCA by establishing additional roadless areas without approval of Congress or without going through the land and resource management planning process.

Response. The proposed and final interim rule, expressly state that road construction and reconstruction needed to ensure access provided by statute or pursuant to reserved or outstanding rights will be protected and not subject to provisions of the rule that would suspend road construction or reconstruction . Additionally, as stated previously, this interim rule does not change land and resource management planning decisions or land allocations nor result in a new roadless area inventory.

Revised Statute 2477. Revised Statute 2477 is a reenactment of section 8 of the Mining Act of 1866, which was the primary authority under which many State and county highways in the western United States were constructed and maintained. Such highway construction required no approval from the Federal Government and no documentation in public lands records. With passage of the Federal Land Policy and Management Act of 1976, Revised Statute 2477 was repealed; however, certain rights-of-way granted before 1976 were preserved.

Some respondents expressed concern about the potential loss or restriction of current or future access to private or State lands that border or are intermingled with National Forest System lands. They expressed fear of the potential loss of traditionally used access routes, many of which they claim should be exempt under Revised Statute 2477.

Response. The proposed interim rule expressly stated that road construction and reconstruction needed to ensure access provided by statute or pursuant to reserved or outstanding rights will be protected. The final interim rule will not limit nor interfere with the exercise of valid existing rights-of-way granted prior to 1976 pursuant to Revised Statute 2477.

Unfunded Mandates Reform Act. A few respondents believe the interim rule violates the Unfunded Mandates Reform Act by shifting economic burdens to local communities, primarily by reducing the timber harvest. These respondents believe that the reduction in direct revenues from payments-to-States and other indirect revenue loses, such as reduced employment, are unfair burdens to local communities and violate the law.

Response. Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Department has assessed the possible effects of the final interim rule on State, local, and Tribal governments, and the private sector. The Department recognizes that there will be some level of economic impacts to some communities as a result of the interim rule. The loss of payments-to-States is expected to be $6 to $8 million annually, far less than the threshold of $100 million, and it is not expected to otherwise adversely affect the economy. The interim rule does not compel the expenditure of $100 million or more by any State, local, or Tribal government, or any person or entity in the private sector. Therefore, a statement under section 202 of the Act is not required.

Comments About Social and Economic Consequences

Issue 7: Intrinsic values of unroaded areas. Reflecting an erroneous belief that roadless areas, unroaded areas, and Congressionally designated wilderness areas are the same, many respondents asserted that unroaded areas have a value more important than can be measured economically and, therefore, should be protected. Some wrote that the Forest Service should take every opportunity to expand the Wilderness Preservation System to meet the nation's future needs for watershed protection, wildlife habitat, and recreation. Noting that a suspension of road construction in unroaded areas provides only short-term protection, they worried that a loss of roadless areas will reduce their opportunities to pursue spiritual and emotional renewal. A perception that wild places are disappearing led many reviewers to call for a halt to timber harvesting practices and associated road building projects.

Response. The stated purpose of the proposed interim rule is to ensure that when managers consider proposals to construct or reconstruct roads, they use the best available science in the decisionmaking process. As already noted, the final interim rule will not make land allocation decisions. The Department recognizes the important and unique qualities of unroaded areas and believes that management decisions for those areas are most appropriately addressed in land and resource management plans.

Issue 8: Economic and cumulative economic effects. Some respondents suggested that overall costs to Federal, State, and local governments, as well as to industries that depend on commodity extraction, will surpass $100 million annually, which is the threshold for an economically significant and major rule, especially if direct and indirect cumulative effects on local communities are considered. Further, these reviewers asserted that an economic impact analysis must be completed before a final interim rule is adopted and that the analysis should consider specifically the cumulative effects of other land management planning decisions that have adversely affected rural communities.

Adverse impacts cited include the Northwest Forest Plan, the Interim Strategies for Managing Anadromous Fish Producing Watersheds (PACFISH), the Inland Fish Aquatic Strategy (INFISH), the North American Free Trade Agreement (NAFTA), and new air-and water-quality regulations. Respondents wrote that implementation of decisions like these have adversely affected the economic base of many cities, towns, and rural areas in the Western United States and that past decisions have not adequately considered cumulative economic effects.

Response. In accordance with Departmental requirements, the Forest Service has completed an economic analysis as part of the environmental analysis for the final interim rule. That analysis reveals that the overall effects of the final interim rule will be minor, although some local communities may be affected more than others, specifically some areas in Idaho. Some social and economic effects will occur as an indirect result of temporarily suspending road construction and reconstruction, primarily those associated with timber harvest. Analysis indicates that the final interim rule will have an annual direct effect of $6 to $8 million in lost revenues to local communities from payments-to-States, which is substantially less than $100 million and will not significantly compromise productivity, competition, employment, the environment, public health or safety, or State and local governments. This interim rule is expected to reduce annual employment nationwide by 270 to 420 direct timber jobs per year over 3 years. To the extent that workers who would otherwise fill these jobs do not find alternative employment, local and county revenues would be decreased. However, provisions of the 1998 Supplemental Appropriations Rescission Act (Pub. L. 105–174) will, to some extent, compensate for shortfalls in payments-to-States from revenues generated on National Forest System lands.

Recent trends of declining timber volumes from National Forest System lands have been recognized in the environmental assessment. The national forests lands encompassed by the Northwest Forest Plan amendments are exempt from suspension of road construction and reconstruction and are, therefore, unaffected by the interim rule. However, national forests within the Columbia River Basin that have experienced a decline in timber harvesting of 7 percent since 1986 and are expected to decline another 5 percent by the end of the decade are also impacted by the interim rule with a further small increment of potential decline in timber production. The impacts from NAFTA on the economics of communities affected by this interim rule are highly speculative and, therefore, have not been accounted for when developing this interim rule. The cumulative economic effects of this interim rule are primarily related to decreases in timber harvesting, but analysis shows that those effects are not significant.

Issue 9: Effects on dependent local communities. Many respondents were concerned that a suspension of decisionmaking with regard to timber sale road construction and reconstruction under the proposed interim rule would adversely affect the financial health of their communities. Lost revenue, fewer new jobs, and escalating unemployment with its attendant social costs were cited as potential negative effects. Noting the loss of high paying jobs and a rising cost of living, many respondents wrote that reduced timber harvest and, to a lesser extent, reduced oil and gas development, will prohibit them from maintaining their lifestyles, lead to a loss of revenue for community infrastructure maintenance, and result in a loss of local community control.

Many asserted strongly that national forests were set aside to provide a sustained yield of goods and services and should continue to do so. Some respondents expressed an opinion that the proposed interim rule will be used by some groups to lobby for a ban on all logging on Federal lands. They asserted that Federally administered lands are economically vital, not just for resource-producing communities, but also for a resource-consuming nation.

Many small communities in resource-dependent counties with substantial acreage in national forest or other Federal ownership responded that they rely on the 25 percent payments-to-States for funding of public schools and for road maintenance. Many wrote that reductions in the amount of Federal timber and other receipts resulting from the proposed interim rule will drastically affect the quality of life in rural communities by shifting a greater financial burden to counties and taxpayers.

Other respondents asserted that jobs will not be lost or that any losses will be offset by the creation of recreation and tourism jobs and employment opportunities from watershed and wildlife habitat restoration efforts. They suggested that communities focus on those opportunities rather than on potential job losses.

Response. As noted earlier, the possible effects of implementing the final interim rule have been evaluated in the environmental assessment and an associated benefit/cost economic analysis. Under the rule, payments-to-States could be reduced by about $6 to $9 million nationally; however, these estimates are uncertain and are greatly dependent on possible changes in planning priorities, budgets, and the timing of implementing projects on the ground. Additionally, the 1998 Supplemental Appropriations Rescission Act (Pub. L. 105–174) requires the Forest Service to compensate States for the loss of revenues from scheduled activities that are suspended by this interim rule. It is uncertain what mitigating effect this law will have on payments-to-States until the rule is implemented and scheduled projects are assessed.

The Forest Service anticipates no long-term effects on the production of forest resources as a result of implementing the final interim rule, although some short-term effects are identified and examined in the environmental assessment and benefit/cost analysis. The anticipated temporary effects on local employment supported by national forest timber harvest and other commodity resource production are expected to be minor, but, as stated previously, relatively greater impacts are probable in some Idaho communities. The environmental assessment does anticipate some employment offsets within the same employment sectors in some areas of the country. For instance, where timber harvest reductions occur in the southern States, the Forest Service expects that many of these reductions can be offset by temporary increases in production from non-federal lands. However, in other areas of the country, such as the Pacific Northwest, there is little opportunity for such offsets.

Issue 10: Loss of infrastructure. Many respondents said the interim rule should address the obliteration and decommissioning of roads. They suggested that many classified roads are in poor repair and should be obliterated to prevent further deterioration of and impacts to the environment from runoff and soil erosion. Others wrote that roads are vital to responsible management of the national forests. They asserted that implementation of the proposed interim rule would be a waste of money and a loss of a public investment. Still others said that obliterating roads is unwise, because the Forest Service will return in a few years and possibly construct roads in these same suspension areas at the taxpayers' expense. Many wrote that roads are investments and should not be obliterated.

Response. The National Forest Transportation System infrastructure is vitally important to responsible management of the national forests. The transportation system is essential to many rural communities, and recreational use of classified roads is also important. The Department recognizes the effects of deferred road maintenance and reconstruction that have occurred in recent years. These deferrals are part of the reason the Forest Service is reexamining the role of roads and developing a new long-term transportation system policy. The interim rule is a temporary measure designed to maintain options for management of certain unroaded areas that are ecologically sensitive to help focus on managing the entire National Forest Transportation System. The agency's long-term transportation system policy will ensure that only necessary roads are constructed and that road maintenance and obliteration priorities are established through public involvement and use of other appropriate planning tools. This rule will have no effect on projects designed to obliterate or decommission roads.

Issue 11: Effects on timber supply. Many respondents believe that reduced timber harvest resulting from implementation of the interim rule will be detrimental to forest health and to the communities that depend on commodity extraction. They wrote about the legal mandate that national forests provide timber resources and suggested that the proposed interim rule will force consumers to use more imported timber products.

However, many individuals believe that placing the remaining unroaded areas off-limits to road construction, reconstruction, will not result in timber supply shortages. Instead, these reviewers suggested that the proposed interim rule will have a negligible effect on timber supply because private ownership and other National Forest System lands can meet the nation's needs.

Response. Production of timber volume from the National Forests accounts for less than 5 percent of the total volume of timber produced in the United States. Implementation of the interim rule may reduce timber harvest volume by 170 to 260 million board feet, which is less than 5 percent of the total volume estimated to be offered from National Forest System lands during an 18-month period. The final interim rule's effect on wood products imports, therefore, is expected to be negligible; less than 1 percent of current total wood fiber imports. Varying levels of substitution of timber from non-federal sources is expected across the country, which should prevent any significant national shortfall. The environmental assessment associated with the interim rule found no significant impacts to commodity production or impacts to communities. However, there are a few local communities, primarily in Idaho, where the amount of timber volume offered could be reduced more than 15 percent from levels initially planned.

Issue 12: Subsidies to commercial users. Many respondents said that road construction and reconstruction projects constitute a subsidy to logging companies and that such subsidies should cease. Some suggested that the 18-month suspension should be extended to ensure that additional public funds are not spent on such subsidies. Others wrote that the construction or reconstruction of purchaser-credit roads serves a larger purpose than to subsidize timber interests. They pointed out that roads facilitate public access to recreation resources, increase the agency's ability to administer programs and policies, and aid in preventing or suppressing wildfire.

Response. Road systems are vital to meet the access needs within each

national forest. The 18-month suspension should provide adequate time for land managers to study the related issues and develop analytical tools and adopt a revised road management policy to ensure that road construction and reconstruction projects are useful, safe, environmentally sound, and cost efficient. Additionally, the Omnibus Appropriation Act for fiscal year 1999 eliminated purchaser credit. For these reasons, the Department finds no need to extend the interim rule beyond the 18-month period.

Issue 13: Access into or through unroaded areas. Many people were concerned that the proposed interim rule would preclude public access to recreational opportunities and industry access to national forest timber and other commodities; others suggested that it would deny or interfere with rights-of-way and jeopardize public safety.

Those citing reduced recreational opportunities cited the importance of roads in providing off-highway vehicle access to remote, pristine, scenic, or wilderness areas. Some argued that navigating undeveloped roads is a desired recreational activity. They wrote that road closures will lead to an overcrowding of available roads and trails, increased environmental consequences to a smaller land base, and a reduced quality of recreational experiences.

In contrast, many respondents referred to unroaded areas as national treasures that should be considered precious because they offer recreational experiences removed from the presence of machines. They wrote that too many of the remaining unroaded areas have been penetrated, leaving less and less land free of disruptive human activity. They suggested that increased motorized access will ruin important wildlife habitat and plant ecosystems and cause an increase in the occurrence of wildfire, poaching, and dumping.

Many others believe that timber harvest, mining, oil exploration, and other commodity extraction activities would be severely curtailed by the proposed interim rule. They wrote that without roads, resource extraction could not continue or would be significantly reduced, causing economic hardship for industry and small rural communities.

Response. The final interim rule does not alter the use of existing roads for multiple-use purposes nor does it limit activities that do not require the construction or reconstruction of roads in unroaded areas. Road construction or reconstruction in unroaded areas needed for legal rights-of-access will be provided in accordance with provisions of all applicable laws. Additionally, in response to public comment requesting exemptions for impending threat to life and property from flood, fire, insect infestation, or forest disease, paragraph (c)(4) has been revised to permit all such access for flood, fire, and other catastrophic events that, without intervention, would cause the loss of life or property.

Comments About Environmental Consequences

Many respondents expressed concerns about old-growth forests, fisheries, and noxious weeds. Many wrote about possible adverse effects on forest health and biological diversity, citing impacts to State and Federally-listed threatened, endangered, or sensitive species. Some, however, wrote that access to unroaded areas is needed to allow managers to effectively respond to changing conditions or catastrophic events, such as insect infestation, the spread of tree diseases, and wildfire.

Issue 14: Impacts to soil erosion, sedimentation, and fish. Many respondents cited timber harvest and the road construction associated with resource extraction as reasons for soil erosion, stream sedimentation, and declining fish populations. They mentioned poor engineering design, improper road placement, and degradation of existing roads as leading causes of these adverse effects. They consider roads to be harmful sources for sediment deposition in prime trout and salmon habitat. Many suggested that the proposed interim rule should become permanent policy. Generally, these respondents supported road obliteration, decommissioning, and reconstruction to mitigate soil erosion.

By contrast, some expressed a belief that roads and road construction are not the primary cause of soil erosion and that logging and associated activities, such as road obliteration, are the major causes.

Response. Science and history have shown that roads and road construction can have adverse effects on biological diversity, wildlife habitat, noxious weed infestation, soils, and watersheds. Poor engineering design, improper road placement, and the degradation of existing roads are all causes of soil erosion and sedimentation. For many wildlife and fish species, core habitat and genetic isolation are intricately tied to lands within the National Forest System.

Scientific evidence compiled to date suggests that, depending on their geologic setting and topography, roads are a significant source of increased erosion, sedimentation, and declining fish habitat. This evidence was an important consideration in formulating the proposed interim rule, as well as in publishing the advance notice of proposed rulemaking for the National Forest Transportation System. The final interim rule offers an important safeguard for protecting unroaded areas for 18 months or when a revised road management policy is adopted, whichever is sooner. Such policy will help ensure that possible environmental effects, including soil erosion and sedimentation, are more thoroughly evaluated before roads are constructed or reconstructed or decommissioned. For example, analytical tools will provide scientific information to inform the decisionmaker whether road decommissioning will produce additional disturbance or halt continuing disturbance.

Issue 15: Impacts from noxious weeds. Road construction and timber harvest are believed to increase the spread of noxious weeds. Respondents wrote that logging equipment and other motorized equipment introduce seeds into formerly pristine areas along roadbeds and in areas where resources have been extracted. Others expressed concern that noxious weeds on Federal lands will spread to adjacent private and State lands. On the other hand, some respondents suggested that limiting road construction may limit the ability of Federal and county agencies to manage the spread of noxious weeds.

Response. Invasion of noxious weeds was recognized as a problem in the preamble to the ANPR (63 FR 4350) and in the proposed interim rule. The Department believes that the suspensions established in the final interim rule provide a measure of safeguards to protect unroaded areas against invasion by noxious weeds until a revised road management policy for assessing the possible effects of road construction or reconstruction is adopted. Management of noxious weeds on the entire National Forest Transportation System will be made under the long-term transportation policy announced in the ANPR. In addition, the Forest Service has an established noxious weed policy intended to reduce the invasion and dissemination of noxious weeds to and from the national forests (FSH 2080).

Issue 16: Impacts to old-growth. Many respondents wrote that protection and preservation of old-growth ecosystems within unroaded and wilderness areas of the National Forest System is a good reason to implement the proposed interim rule and subsequent management policies. Others distinguished the proposed suspension

of road construction and reconstruction from protection of old-growth, noting that insect, disease, and fire events naturally affect changes in the forest environment and make preservation of old-growth ecosystems problematic. In addition, they wrote that the absence of management plans for old-growth forests has created unhealthy stands that are thick with fuels.

Response. Protection of old-growth forests is not an objective of the proposed interim rule. Issues germane to management of old-growth ecosystems are most appropriately addressed in Regional guides, individual forest plans, and during project planning at the local level.

Issue 17: Impacts to wildlife and plants. Some respondents wrote that protection of plants and animals on undisturbed National Forest System lands should be the purpose of the interim rule and also should be incorporated into agency policy. They expressed a belief that survival of most forest species is ensured in unroaded areas and that an absence of motor vehicle noise, trampling of sensitive plants, littering, and excessive hunting would protect plants and animals. Others suggested that the Forest Service should better balance its management focus between mature and early successional species, placing less emphasis on those species dependent on wilderness and unroaded areas. They wrote that early successional forest management contributes to stratification and diversity among the many species that depend on young forests.

Response. The purpose of and need for the interim rule concerns roads and the problems associated with their construction and reconstruction. Issues related to protection and management of wildlife and plants are best addressed through the agency's established planning process, which includes land and resource management plans and project-level decisionmaking. However, the environmental assessment accompanying the final interim rule does evaluate the possible effects of its implementation on wildlife and plant species and concludes that those effects will be minimal.

Issue 18: Impacts on habitat fragmentation and wildlife corridors. Many respondents welcomed the proposed interim rule as a step toward protecting and preserving critical habitat for numerous species. These respondents wrote that protection of relatively undisturbed ecosystems would help maintain sufficient habitat for viable bird, fish, and animal populations and provide wildlife corridors. A few respondents noted that neotropical birds require contiguous forest cover, which occurs in unroaded areas, and that those species depend on such habitat to nest and reproduce. They wrote that large, pristine, and unmanaged areas maintain critical genetic diversity and species viability. Although many favored the proposed interim rule, they felt that the 5,000-acre guideline would exclude important habitat in the Eastern United States where unroaded areas tend to be smaller than those in Western United States. Some respondents disputed the need to mitigate ecosystem fragmentation, and others questioned the validity of analyses that consider home range or expressed doubt that roads are solely to blame for population declines or the demise of certain species.

Response. The maintenance and protection of large blocks of forest land to prevent habitat fragmentation and retain wildlife corridors is a short-term benefit of the interim rule. Long-term management measures to protect corridors and prevent fragmentation are evaluated in land and resource management planning documents and may be considered in the comprehensive revision of the long-term National Forest Transportation System policy announced in the January 28, 1998, ANPR (63 FR 4350).

Issue 19: Impacts on Threatened, Endangered, or Sensitive (TES) species. A number of comments reflected public awareness of TES species requirements. Many mentioned large predators and carnivores, focusing on the need to monitor and preserve grizzly bear and its habitat in the 48 contiguous States, the brown bear in Alaska, and large cats like the cougar and the lynx. Because neotropical birds are particularly susceptible to habitat fragmentation, some respondents wrote that the proposed interim rule would help increase and improve migratory corridors and critical nesting habitat for those species. Sedimentation from roads and fragmented drainages were blamed most often for the decline of trout, salmon, and other important fish populations. Numerous comments reflected a belief that the proposed interim rule recognizes species that have special interest to people and responds to this interest with increased habitat protection.

Response. The final interim rule does provide short-term assurance that unnecessary road construction will be avoided. This ensures that TES species that require habitats associated with unroaded areas are also better protected. Section 7 consultation with the Fish and Wildlife Service and the National Marine Fisheries Service has been completed for this interim rule. Additionally, when new and improved analytical tools are adopted and applied, protection of TES species will be integrated into those requirements.

Comments About Public Participation

Issue 20: Disregard for public involvement in planning. Many respondents wrote that the proposed interim rule would interfere with local forest planning where intensive collaboration and tough compromises have resulted in well-balanced management direction. Many expressed anger that a suspension of road construction and reconstruction would disregard their hard work and invalidate current forest plans. They were concerned that the proposed interim rule would undermine the trust and collaboration gained through effective forest planning. Some questioned the legality of ignoring the forest planning process in 36 CFR part 219 by means of a ''top-down'' administrative action. They asserted that the proposed interim rule ignores recent analyses conducted at the national forest and regional levels and that current plans have adequately assessed the possible effects of road construction and reconstruction.

Response. By providing exemptions for revised forest plans, the proposed interim rule recognizes and validates specific planning that has occurred through collaboration at the local level. The proposed interim rule does not alter or overturn land management prescriptions, guidelines, or standards contained in land and resource management plans; it merely defers some activities that might be implemented during the next 18-month period. The Department believes the integrity of the NFMA forest planning process has been protected and that the interim rule does not affect that process.

Issue 21: Insufficient public involvement. Officials from all levels of government, including Tribal, Federal, State, county, and local expressed concern about a perceived deliberate attempt to circumvent their authority and bypass the ongoing forest planning processes. Many believe that the authority of Congress and the will of the American people are not reflected in the proposed interim rule. They asserted that the proposed interim rule is a misguided attempt to appease special-interest groups at the general public's expense. Questioning the Forest Service's motives, a few respondents asserted that the agency is party to a broad, hidden agenda that would deny public access to public lands.

Response. The purpose of the interim rule was clearly stated in the **Federal**

Register notice of January 28, 1998 (63 FR 4351). Given the widespread public interest in National Forest System management, the Forest Service gave advance notice of the proposal and invited comment. In response to requests from various individuals, organizations, and elected officials, on February 27, 1998, the agency extended the public comment period on the proposed interim rule for an additional 30 days. Additionally, the agency hosted 31 open houses receiving approximately 2,300 persons and 1,800 comments. Further, the agency will provide opportunity for public comment on revising the roads management policy which will replace the interim rule.

Issue 22: Availability of information. Many respondents wrote that the Forest Service inadequately distributed information to the public about its intent and did not provide sufficient time for meaningful public input to the review process. A number of individuals expressed dissatisfaction with local Forest Service officials' ability to answer questions or to provide more information about the proposed interim rule.

Response. The Department acknowledges that information on the proposed interim rule was not made available before publication in the **Federal Register** on January 28, 1998 (63 FR 4351). Facts used to support the proposed interim rule were published in an Appendix to that announcement (63 FR 4351, Appendix A—Facts About the National Forest Road System). Further information and reports were made available through the Internet. In response to public requests, the comment period was extended 30 days, and a schedule of open houses was announced in the **Federal Register** on February 27, 1998 (63 FR 9880). As part of that announcement, preliminary effects information was also made available to the public. Local officials were provided with this information to share with local public and special-interest groups. As evidenced by approximately 53,000 responses to the proposed interim rule, the Department believes sufficient public notice and involvement occurred.

Suggested Revisions to the Proposed Interim Rule

Definitions. There was not a definition paragraph in the proposed interim rule.

Comment: Addition of definitions. Many respondents asked that the definitions of roads and roadless areas be included in the final interim rule. Most were concerned that existing unclassified, or ''ghost'' roads, would be considered as roads and thus eliminate areas where the suspension should apply. Others expressed concern that the trails they use for hiking, biking, and horseback riding would be characterized as roads, and that necessary maintenance and repair would not be done during the interim 18-month period.

Response. Because such definitions are critical to understanding which projects will be subject to suspension, the agency has added a new paragraph (a) *Definitions.* The terms ''roads'', ''classified roads'', ''unclassified roads'', ''unroaded areas'', and ''RARE II areas'' are defined. Definitions for ''road construction'', ''road reconstruction'', and ''road maintenance'' were not added because these terms are already defined in the Forest Service Manual (FSM 7705).

The term ''roads'' is used in the interim rule as a general term to mean a vehicle travel way over 50 inches wide. A road may be classified or unclassified. ''Classified roads'' are those that are constructed or maintained for long-term highway vehicle use. Classified roads may be public, private, or forest development. ''Unclassified roads'' are roads that are not constructed, maintained, or intended for long-term highway use. Unclassified roads include all temporary roads associated with fire suppression, timber harvest, and oil, gas, or mineral activities, as well as travel ways resulting from off-road vehicle use. Unclassified roads, including roads created by repeated public use and often used by off-road vehicles, do not disqualify an area for consideration as unroaded in the final interim rule.

The term ''roadless'' is used in the final interim rule in conjunction with areas already inventoried that have defined boundaries as established through forest planning, RARE II, or some other agency planning process. The term ''unroaded area'' is defined in the final interim rule and is used to characterize any area that does not contain classified roads, even if the area was not previously inventoried in RARE II or land and resource management planning.

The final interim rule will not obliterate or prevent the use of existing classified or unclassified roads. However, construction and reconstruction of unclassified roads in certain unroaded areas will be suspended as described in paragraph (b) of the final interim rule. Decisions regarding the management and use of such travel ways will be addressed through land and resource management planning and project-level decisionmaking, which require environmental analysis and public involvement.

Suspensions. Paragraphs (a)(1)–(5) of the proposed interim rule listed five categories of unroaded areas in which road construction or reconstruction would be suspended. First, the proposed interim rule would apply a temporary suspension of road construction and reconstruction in roadless areas of 5,000 or more acres inventoried in RARE II and in other unroaded areas identified in land and resource management plans. Second, the proposal would also suspend road construction and reconstruction in unroaded areas greater than 1,000 acres that are contiguous to congressionally-designated wilderness areas or contiguous to Federally-administered components of the National Wild and Scenic River System that are classified as ''Wild''. Third, suspensions would apply to all unroaded areas greater than 1,000 acres contiguous to roadless areas of 5,000 acres or more on other Federal lands. In addition, the suspension would apply to two other categories: (1) Any National Forest System (NFS) areas of low-density road development or (2) any other NFS area that retains its unroaded characteristics which the Regional Forester subsequently determined have such special and unique ecological characteristics or social values that no road construction should proceed.

Comment: Size and type of areas where suspensions should apply. Many respondents disagreed that the proposed interim rule should apply only to unroaded areas that are 1,000 acres or more, suggesting instead, that no size limit should be imposed. These respondents proposed that the interim rule should apply to all roadless areas, regardless of size. Others stated that road construction and reconstruction should also be suspended in any unroaded area, not just those adjacent to inventoried roadless areas. A few respondents offered minimum size criteria, which ranged from 10 to 500 acres, to 100 square miles. Still others suggested that criteria might appropriately vary by region; for example, Eastern and Southern forests, which have smaller contiguous National Forest System lands than forests in the West, should have a smaller minimum size criterion. Many recommended that the suspension also should provide protection to unroaded areas that have not been inventoried. Some respondents felt that the suspension should apply to roaded portions of inventoried roadless

areas that have been roaded since the inventory was done.

Response. The 5,000-acre limit described in RARE II was used as a criterion for wilderness suitability to define areas that could be effectively managed while providing visitors with an opportunity for solitude. This criterion was included in the proposed interim rule to clearly restate the acreage criteria used for RARE II delineations. The intention was not to limit suspensions to areas that are 5,000 acres or larger. Agency officials believe that the 5,000-acre criterion specific to RARE II areas is redundant and confusing and unnecessary. Therefore, paragraph (b) of the final interim rule omits this acreage limit.

The vast majority of all large blocks of roadless areas (5,000 acres or more) were inventoried in RARE II or forest planning. While some large blocks of National Forest System unroaded areas, in excess of 5,000 acres, have been created through land exchanges, purchases, road obliterations and other management actions, it is impractical and unnecessary to commission a new inventory of roadless areas at this time. Such inventories are appropriate at the forest planning level and regional assessment scales within the existing agency planning and decisionmaking framework. Therefore, road construction and reconstruction are not suspended in un-inventoried areas that are not contiguous to inventoried roadless areas.

Areas inventoried as roadless under RARE II or forest planning, but in which roads have since been constructed, no longer have the ecological and social values of roadless areas and, therefore, do not meet the same threshold of concern and need for protection. Therefore, in the final interim rule a one-quarter mile road influence zone has been added as a criterion for determining the remaining areas that will be considered unroaded and subject to suspension of road construction and reconstruction. An influence zone is an area on either side of a road where the effects on ecological process from the road are felt. Recent science suggests that a road influence zone may be as great as 1000 meters, in excess of one-half mile, away from the road. Other studies suggest a zone as small as 100 meters. For purposes of the final interim rule, the one-quarter mile limit was selected as an intermediate measure of road influence. The final interim rule states at paragraph (b)(1) that road construction and reconstruction will be suspended in remaining unroaded portions of RARE II and forest plan inventoried areas that are one-quarter mile or more beyond any classified road.

The suspension is intended to apply to roadless areas already inventoried and identified through the forest planning process (36 CFR part 219). The final interim rule does not call for a new inventory of roadless areas or compromise the local planning processes. It does, however, cover all unroaded portions of roadless areas inventoried in the forest plans, irrespective of size. The intent in establishing the one-quarter mile limit is not to encourage road construction or reconstruction within the one-quarter mile influence zone. However, it is anticipated that there will be no new road construction or reconstruction within the one-quarter mile influence zone.

The proposed interim rule did not contain an explicit provision to suspend road construction or reconstruction in unroaded areas contiguous to RARE II or contiguous to areas inventoried in land and resource management planning. Having considered the comments, this omission has been corrected. The final interim rule includes an explicit provision, at paragraph (b)(2), suspending road construction and reconstruction in unroaded areas greater than 1,000 acres contiguous to RARE II and forest plan roadless inventoried areas. This provision recognizes that these areas provide the same ecological benefits as areas contiguous to wilderness, Wild components of Wild and Scenic Rivers System, or unroaded areas of other Federal ownership. To qualify for suspension, these contiguous areas must have a considerable common boundary, provide an important corridor for wildlife movement, or significantly extend a unique value of the already inventoried roadless area. This condition is added to ensure that contiguous areas enhance ecological values of inventoried roadless areas. Without this condition, irregular shapes might be created that do not, in fact, significantly enhance the ecological values being protected.

Comment: Regional Forester's authority to designate special areas. Most respondents did not want Regional Foresters to have the authority to suspend road construction in areas thought to have unique ecological characteristics or social values. These respondents wrote that such authority would allow Regional Foresters ''arbitrarily'' to designate land as special or unique and thereby withdraw it from possible timber harvest. Many expressed a concern that, because special or unique attributes could be found on every acre of the National Forest System, unelected officials might eventually put all lands off-limits to natural resource management. Others, citing a need to protect remaining unroaded areas, wrote that Regional Foresters should use their authority under the proposed interim rule to prevent road construction.

Response. Paragraphs (a)(4) and (a)(5) of the proposed interim rule are not retained in the final interim rule because of the concern with how these procedures would be implemented with consistency and fairness. Additionally, further consideration of these paragraphs led to a conclusion that these provisions are unnecessary to accomplish the objectives of the interim rule, since Regional Foresters have authority to limit road construction or reconstruction without the interim rule.

Comment: Additional areas need to be protected. Some respondents asked that the final interim rule identify specific areas in which road construction and reconstruction would be suspended. Many respondents suggested specific areas they wanted to be protected by suspending road construction and reconstruction. These areas included those listed in the Southern Appalachian Area Assessment and other specific areas of special meaning to various respondents.

Response. Areas that have been inventoried through an established planning process with public involvement were considered for suspension under the proposed interim rule. For example, the preamble to the proposed interim rule (63 FR 4352) listed several areas that might warrant protective consideration under the Regional Foresters' authority, such as municipal watersheds that provide drinking water; habitat for listed or proposed threatened and endangered fish, wildlife, or plants; and areas listed in the Southern Appalachian Area Assessment, Social/Cultural/Economic Technical Report (Report 4 of 5, dated July 1996). In response to these comments, the Department considered adding designated municipal watersheds and threatened and endangered species habitat to areas suspended but decided not to include these areas in the final interim rule because they are protected through existing environmental laws such as the Safe Drinking Water Act, Clean Water Act, and the Endangered Species Act.

Having considered the comments proposing additional unroaded areas that should be subject to the road construction and reconstruction suspension, the Department has decided to add areas listed in Table 5.1 of the Southern Appalachian Area Assessment

as specific and unique ecological areas where road construction or reconstruction will be suspended. Those areas are included in current inventories and have been the subject of extensive public discussion, scientific analysis, and collaborative planning and thus merit special consideration before deciding to construct or reconstruct roads in them.

Comment: Scope of suspension. A number of respondents asserted that all road construction should be suspended, arguing that no additional roads are needed to manage the national forests and that the potential risks are more significant in heavily roaded areas than in roadless areas. These reviewers argued that if the purpose of the proposed interim rule is to allow the Forest Service time to develop improved analysis tools, those tools should be applied to all road construction throughout the National Forest System, not just to roads in unroaded areas. Many wrote that, to be equitable, national policy must be truly national in application. A few respondents asked that the final interim rule suspend all ''destructive'' activities, including grazing, mining, and oil and gas development. They wrote that unroaded areas are priceless because of their biological diversity, wildlife habitats, and spiritual values. Those whose livelihoods would be more directly affected by a suspension of road construction or reconstruction had a different view. They saw the proposed interim rule as a first step towards eliminating multiple-use and sustained-yield management of unroaded areas. Some wrote that the proposed interim rule is ''* * * an attempt by special interests to lock up our National Forests to the public.''

Response. The Advance Notice of Proposed Rulemaking (ANPR) and the proposed interim rule both addressed the need for a time-out while additional transportation planning tools are developed and a revised road management policy is adopted. Interim action is needed to ensure better roads management and planning, to help managers avoid causing irreversible damage to resources, and to help focus attention on comprehensive management of the entire National Forest Transportation System. This final interim rule is not intended to suspend decisions made more appropriately in the forest planning process. The purpose of the final interim rule is to retain resource options in unroaded areas and to safeguard those areas from the potential adverse effects associated with road construction and reconstruction until a revised road management policy is adopted. The potentially damaging ecological effects of a first entry into a unroaded area is often proportionately greater than the effects of similar construction or reconstruction in an already roaded area. By contrast, suspending all road construction throughout the National Forest System would be extremely disruptive to the ongoing management of lands and resources. Much road reconstruction is specifically designed to reduce environmental problems by relocating roads originally constructed in sensitive riparian areas, to improve road drainage and reduce erosion, and to improve safety and access. Curtailment of all such work would have greater ecological and social consequences than continuing current program activities in roaded areas. Therefore, the suggestion of suspending all road construction has not been adopted.

Comment: Applicability to construction of temporary roads. A number of respondents were concerned that temporary roads would be allowed during the suspension and indicated that the Forest Service should not allow this to happen.

Response. In the short term, temporary roads can create as great a risk of environmental damage as permanent roads. The proposed interim rule recommended temporary suspension of permanent and temporary road construction and reconstruction in unroaded areas of National Forest System land, with certain stated exemptions. This provision is retained in the final interim rule.

Exemptions. Paragraphs (b)(1)–(b)(4) of the proposed interim rule expressly exempted four categories of roadless areas from the temporary suspension of road construction and reconstruction:

1. Roadless areas within national forests that have a signed Record of Decision revising their forest plans and have completed the administrative appeal process as of the effective date of the rule;

2. Roadless areas within national forests that have a signed Record of Decision revising their forest plans on which the administrative appeal process is underway, but not completed as of the effective date of the rule;

3. Roadless areas in Washington, Oregon and California within those portions of national forests encompassed by the Northwest Forest Plan; and

4. Road construction or reconstruction in roadless areas needed for public safety or to ensure access to private lands pursuant to statute or outstanding and reserved rights.

Comment: Elimination of exemptions. Many respondents questioned the need for any exemptions to the interim rule. To support their arguments, they cited perceived instances of poor planning, an intentional exclusion of roadless issues from planning, and a lack of trust in local Forest Service officials. Many wrote about inadequate safeguards for protecting unroaded areas, insufficient scientific justification, and lack of credible forest planning processes. These reviewers said that exempting any national forest or planning area from the suspension will have a negative effect on lands they believe are already over-roaded and degraded.

By contrast, some respondents thanked the Forest Service for honoring the effort of national forest officials and their public partners to complete plan revisions. They felt that areas in which citizens have invested much time and energy to forge agreements and reach compromises should be exempt from the final interim rule. Many wrote that formal land management planning and appeals processes would be undermined by a ''top-down national forest plan amendment'' to suspend road construction in most roadless areas. A few suggested exempting all national forests that are in any stage of the planning process, and some were concerned that the interim rule would result in decisions that reverse management direction in revised land and resource management plans now under appeal without regard for the hard work of their communities. Respondents expressing this concern most often cited the Tongass Land and Resource Management Plan.

A number of respondents were concerned that a provision in the proposed interim rule to exempt forests of the Pacific Northwest and national forests with revised forest plans might be reversed in the final interim rule. These respondents believe that formal land management planning and appeals processes would be undermined if revised forest plans are not exempt from the temporary suspension of road construction and reconstruction in the final interim rule. This concern was often coupled with a general opinion that the Forest Service is disregarding valid processes for the development of land and resource management plans.

Response. The Department believes strongly that established planning processes should be honored and, therefore, the exemption for revised forest plans has been retained in the final interim rule. However, the most recent available science has not been incorporated into all revised forest plans. Therefore, the final interim rule

includes a provision at paragraph (c)(1) that exempts only the most recent forest plan revisions, specifically those that have Records of Decision issued after January 1, 1996. The effect of this cutoff date is that unroaded areas within Virginia's George Washington National Forest are subject to the road construction suspension. The George Washington National Forest is the only forest that would have been exempted under the proposed interim rule but will not be exempted under the final interim rule.

Comment: Application of exemptions to the Pacific Northwest and Alaska. A majority of those who commented on application of the proposed interim rule to the Pacific Northwest and Alaska strongly recommended that the national forests in these areas should be subject to the road construction and reconstruction suspension, citing the unique ecological characteristics of these lands. They asserted that maintenance of biological diversity and protection of old-growth ecosystems should be principle goals.

Response. To avoid undue interruption or interference with established planning processes and to honor current decisions that incorporate current available science, the agency proposed an exemption for those plans in the Pacific Northwest and Alaska. Following publication of the proposed interim rule, Forest Service officials prepared an environmental assessment of the possible effects of several alternatives for suspending road construction and reconstruction. One alternative included suspending road construction and reconstruction in unroaded areas of forests encompassed by the Northwest Forest Plan and the Tongass National Forest Land and Resource Management Plan. The assessment shows that suspending road construction and reconstruction in unroaded areas of the Tongass National Forest would disrupt projected timber harvesting substantially. However, in recent years the actual timber harvested from the Tongass National Forest has been less than levels offered for sale. The forests encompassed by the Northwest Forest Plan would be disrupted to a lesser degree than the Tongass. The Tongass Land and Resource Management Plan and the Northwest Forest Plan were subject to substantial public involvement, greater, in fact, than received by most other land and resource management plans that also would be exempt under the proposed interim rule. The Tongass and Northwest Forest plans also involved considerable scientific input by scientists evaluating the environmental consequences that might result from following these plans. Moreover, the Tongass forest plan is still undergoing evaluation as part of the administrative appeal process under 36 CFR 217. As a result of the considerable science and public involvement in formulating these plans and considering the disruption to management that could result by applying suspensions to these forests, the Department has decided to retain the exemption for the Tongass Land and Resource Management Plan and those forests encompassed by the Northwest Forest Plan.

Comment: Exemption for plans under development but yet to be adopted. Some respondents believe that land and resource management plan revisions that have been ongoing for the last few years should be honored by exempting these plans from suspension provisions of the final interim rule. These respondents state that the rigor of analysis in these plans is comparable to land and resource management plans exempted under the proposed interim rule and upon completion of these plans they should be exempted.

Response. The Department agrees with these comments. Since future forest plan revisions will undergo analyses as rigorous as those conducted since January 1, 1996, forest plan revisions that will be approved while the rule is in effect would be exempt upon completion of a Record of Decision revising the forest plan and implementation of that decision.

To date, the Northwest Forest Plan is the only multi-agency, eco-regional, decisionmaking document that has extensively employed available science, especially integrating scientific findings into the decision. However, decisions on other multi-agency, eco-regional projects may be issued while the final interim rule is in effect; for example, the Interior Columbia Basin Ecosystem Management Project (ICBEMP). Paragraph (c)(3) of the final interim rule exempts portions of those forests encompassed by the ICBEMP upon completion of a Record of Decision for that planning effort or other multi-agency eco-region decisionmaking made during the 18-month suspension period of the final interim rule. Paragraph (c)(3) also would permit road construction and reconstruction in unroaded areas where the forest plan amendment or revision has been developed through multi-Federal agency coordination based on an eco-regional assessment.

Comment: Opportunity to provide additional information in appeals of forest plan revision decisions. One individual asked the Forest Service to reopen the appeal period for those forest plans exempt under the proposed interim rule but currently under appeal; for example the Tongass Land and Resource Management Plan. This respondent believes that the appeal period should be extended until new and improved analytical tools are developed and cited in the appeal process.

Response. To extend current planning and appeal processes for the 18-month suspension period would not honor established planning and appeal processes. Additionally, a halt to all ongoing planning, decisionmaking, and appeal processes until new and improved analytical tools are developed would result in unreasonable and unnecessary delays of many forest management activities. The final interim rule respects current planning and decisionmaking; it does not alter the established process for the Forest Service Chief's review of forest plans nor does it change the criteria for administrative review. If the Chief remands a land and resource management plan to reconsider certain land allocations, NFMA compliance would be required, as it would for any change in a land and resource management plan.

Comment: Exemptions for ski areas and oil and gas leases with current authorizations. A number of respondents asked that oil and gas, mining, and ski area projects be exempted from the final interim rule. Permit holders wrote that they have made good-faith efforts to complete necessary administrative processes and abide by the conditions of their respective permits. They stated that the proposed interim rule would revoke rights duly given under permits and unfairly affect responsive and responsible operators for the actions of others. If permits were to be affected by the final interim rule, they asked that the Forest Service allow road maintenance and repair.

Exempting ski area permits was an issue for many. The proposed expansion of Colorado's Vail Ski Area was of particular concern for those who believe that Vail does not need to expand and that the required road construction would have negative effects on the adjacent Two Elks Roadless Area. Some expressed concern about the proposed construction of new ski areas on the Kootenai National Forest in northwest Montana and in Oregon's proposed Pelican Butte area. By contrast, a few persons wrote that ski areas should be exempt from the proposed suspension.

Response. Recreation resort developments, including ski areas, oil and gas leases, and mining operations,

are authorized by special use permits or other legal instruments for development and operation. These authorizations constitute a long-term, legally binding relationship between the permit holder and the Forest Service. Paragraph (d)(1) of the final interim rule retains the proposed exemption for special use authorizations and contract commitments made in such agreements. Ski area master development plans and other large development plans do not necessarily make project-level decisions on anticipated road construction or reconstruction. However, road construction and reconstruction evaluated and decided as part of a development plan are considered to be authorized under the special use authorization and, therefore, are encompassed by exemptions in paragraph (d)(1) of the final interim rule.

Less than 15 miles of permanent and temporary road construction and reconstruction for ski areas could be affected. Most proposed construction and reconstruction for ski areas are within areas covered by approved master development plans and are not subject to suspension of road construction and reconstruction. Since most oil and gas and ski area developments are not subject to suspension, the Department does not believe the final interim rule will unduly disrupt these activities and, therefore, a specific exemption is unnecessary in the final interim rule.

Comment: Exemption of land exchanges and timber sales under analysis. A few respondents representing timber companies requested that the final interim rule exempt road construction projects in pending land exchanges because, in some cases, the terms and conditions of a land exchange may be contingent on future access and road construction may be required. Some asked that active timber sale contracts or proposed timber sales for which planning has been completed also be exempt.

Response. The final interim rule will not affect rights-of-access associated with land exchanges already decided. Land exchanges in and of themselves do not involve road construction or reconstruction and, therefore, are not affected by the final interim rule. However, road construction or reconstruction in unroaded areas affected by the temporary suspension in connection with a land exchange could not proceed. There are few situations where land exchanges are dependent on road construction or reconstruction; therefore, an exemption for road construction or reconstruction associated with land exchanges is unnecessary. The final interim rule will not modify any existing contract or other instrument including timber sale contracts. Timber sales in the planning and contract award process that have not progressed to a signed timber sale contract, as of the effective date of the rule, create no right and, therefore, would be subject to suspension provisions of paragraph (b) of the rule.

Comment: Exemption of recreation roads and trails. A few respondents wrote that recreation roads and trails funded with Federal and State money should be exempt from the final interim rule. These reviewers expressed concern about the suspension's potential effects on continued funding for roads or off-road vehicle trails jointly operated and maintained by Federal and State government entities. Other respondents were concerned that existing recreation roads and trails would be removed unless exempted by this interim rule.

Response. Approximately 230 recreation projects with approximately 195 miles of road construction or reconstruction are needed to access the government facilities are estimated for all NFS lands during the period the final interim rule would be in effect. Because less than one mile of associated access would be within an unroaded area covered by the final interim rule, the effect would be negligible. Additionally, the Forest Service will not remove any existing roads or trails within unroaded areas as a direct consequence of this final interim rule.

Comment: Exemption for national forests covered by the Upper Columbia River Basin Assessment. Many respondents asked that the final interim rule exempt national forests in the Upper Columbia River Basin (UCRB), and one organization requested that the Forest Service exclude all projects within the Interior Columbia Basin Ecosystem Management Project (ICBEMP) for which the NEPA process has already begun.

A number of respondents argued that years of work and thousands of hours of research have gone into the creation of the ICBEMP and, therefore, the Forest Service should consider exempting all forests encompassed by the ICBEMP. They wrote that the regionally developed ICBEMP is based on sound science, broad public participation, and in-depth analysis, which should be sufficient to ensure that road construction and reconstruction anywhere in the area will meet the objectives of the final interim rule. One individual said, ''* * * the active public participation and substantial work on guidelines factored into the ICBEMP mean the proposed moratorium on road building in roadless areas in the Basin is not necessary to achieve the better decisionmaking process you are seeking.'' A few respondents suggested that an analysis process be included in the final interim rule that would allow road construction and reconstruction to proceed within the area encompassed by the ICBEMP if the science in the ICBEMP assessment was used at the project-level and a watershed analysis was followed to make site-specific road construction decisions.

In contrast to these veiwpoints, others argued that since no decisions have been made for the ICBEMP, none of the standards and guidelines that might apply to road construction and reconstruction are binding on any of the national forests in the analysis area. In addition, some stated that the areas most at risk from detrimental effects of road construction are within the ICBEMP.

Response. The ICBEMP team and public participants are using the best available science to plan, locate, and design roads. This extensive planning effort has maintained extensive public involvement, conducted in-depth analyses, and fostered collaboration among all Federal management and regulatory agencies directly affected by the proposed action. However, as many respondents noted, there are no final resource decisions and, therefore, guidelines and standards that may result are not yet binding on the Forest Service nor agreed to by the cooperating agencies.

Having considered these comments, the Department has adopted a revised exemption at paragraph (c)(3) that will permit road construction in unroaded areas to proceed where forest plan amendments or revisions are adopted using a multi-Federal agency approach, current and available science, and an eco-regional assessment. Thus, portions of the National Forest System covered by the ICBEMP will be exempt when the Forest Service issues a final decision that amends or revises forest plans.

Comment: Impending threat considerations should be exempted. Many wrote that the Forest Service proposal gave no recognition to the importance of roads for fire suppression, access for emergency/rescue personnel, and critical insect and disease treatment. They said that the proposed temporary suspension would limit the agency's ability to fight fires, rescue injured or lost persons, and prevent property loss. Many wrote that access also improves fire suppression safety. Others argued that areas should be exempt from active management of fuel

accumulation and improvement of forest health.

Response. The Forest Service included an exemption for public safety in the proposed interim rule. This exemption is retained in paragraph (c)(4) of the final interim rule, which has been modified, based on consideration of comments, to also provide for the imminent threat of flood, fire, or other catastrophic event that, without intervention, would cause a loss of life or property. This provision allows for fire suppression and emergency rescue of those who are in danger and provides for a level of pro-active management to mitigate potential emergency situations before they become unmanageable.

The final interim rule does not provide an exemption for impending threats to significant ecological values, as recommended by some respondents, although the Forest Service and Department did consider such an exemption. Definitions of significant ecological values are subjective, may be misinterpreted or misconstrued, and could result in inappropriate road construction or reconstruction while the final interim rule is in effect.

Comment: Violation of Indian Treaty Rights. A few respondents expressed concern that the proposed interim rule would violate Indian treaty rights.

Response. The proposed interim rule expressly stated that road construction and reconstruction needed to ensure access provided by statute or pursuant to reserved or outstanding private rights will be protected. However, the Department has concluded that the term ''private rights'' may not be sufficient to include treaty rights; therefore, the final interim rule specifically adds treaty rights to paragraph (c)(4) to make clear the intent to protect Indian treaty rights. Additionally, the term ''rights'' has been substituted in paragraph (c)(4) of the final rule for ''private rights'' to ensure there is no confusion that State and local government rights are also protected.

Scope and Applicability. Paragraph (c) of the proposed interim rule contained an assertion that the interim rule would not modify, suspend, or cause to be reexamined any existing permit, contract, or other instrument authorizing occupancy and use of the National Forest System. This provision also would not modify or suspend any land and resource management plan, any land allocation decision, or other management activity or use within unroaded areas in which road construction or reconstruction have been temporarily suspended. Finally, in the proposed interim rule, the suspensions would remain in effect until adoption of a revised road management policy is adopted or 18 months, which ever is sooner.

Comment: Duration of the interim rule. Many people commented on the proposed length of the final interim rule, as well as the design and application of new and improved analytical tools. Those supporting and those opposing the proposed interim rule wrote that the Forest Service has a poor record of completing plans and implementing policy changes within established timeframes. Some said that it would be impossible to conduct a comprehensive study and implement an appropriate revision of the National Forest Transportation System within 18 months. A few respondents suggested that the final interim rule should remain in effect until forest plan revisions have been completed or until a long-term transportation system policy has been adopted. Specific suggestions for the duration of the rule ranged from 6 to 36 months.

Some respondents expressed fear that the final interim rule would become permanent by default, while others specifically requested that it be made permanent. Such comments were often accompanied by personal views on the ''appropriate use'' and management of public lands. Many respondents cited the importance of forest management and the need to actively address forest health problems. These respondents expressed concern that, like the interim Strategies for managing Anadromous Fish Producing Habitat (PACFISH), the Inland Fish Aquatic Strategy (INFISH), and the California Spotted Owl Environmental Impact Statement (CASPO), the final interim rule would eventually become institutionalized. On the other hand, many recommended maintaining unroaded areas in an unmanaged condition and suggested that the Forest Service provide those areas with additional protection.

Response. The Department is determined that the final interim rule remain in effect for only as long as necessary until a revised road management policy is adopted. For this reason, a limit of 18 months was imposed to mitigate against delays while these tools are developed and tested and a revised road management policy is adopted. The certainty of the final interim rule's termination will expedite the revised policy and help ensure timeliness.

Comment: Applicability to Memorandums of Understanding. A few Federal and State agency respondents expressed concern that the proposed interim rule would delay projects conducted under established agreements with other Federal or State agencies. The only project of this type cited was the multi-agency Yellowstone Pipeline project.

Response. The Yellowstone Pipeline project is an ongoing project that has fostered valuable collaboration among 11 cooperating agencies involved in decisionmaking. Substantial resources have been committed to this project over the last few years. The Department does not intend to disrupt established land management planning or broad, multi-agency planning. Therefore, paragraph (d)(2) of the final interim rule makes explicit that the suspension does not apply to the Yellowstone Pipeline project.

Comment: Lack of description of the analytical tools. A few respondents expressed concern that the analytical tools that will replace the final interim rule are not described in the preamble to the proposed interim rule. These respondents believe that these analytical tools will replace established planning mechanisms such as forest planning. They are also concerned that the analytical tools will impose standards that will eliminate future roading in unroaded areas. These respondents asked that the analytical tools be described in the final interim rule.

Response. The Department agrees that the analytical tools should be better described. Since publication of the proposed interim rule, a draft roads analysis procedure has been developed and is being field tested on six national forests across the National Forest System before undergoing a rigorous scientific peer and technical review. The objective is to develop a procedure that integrates ecological, social, and economic considerations into future decisions about building roads in roaded and unroaded areas. The procedure, which serves as a template to guide thinking about road options at all planning scales, will be composed of various analytical steps to identify and gather needed information and to produce maps and other documents. The analytical tools will be designed to be issue driven; that is, they will help managers identify public issues when analyzing local road system status and need. The process will use a multi-scale approach to ensure that all road-related issues are examined in context. The procedure will include methods for developing management opportunities and options and assessing risks associated with decisions to maintain, reduce, and expand road networks on the national forests. In addition, the process will provide a framework for examining important issues and

developing relevant information before managers enter into any formal decision process that may change the characteristics and uses of national forest road networks.

These analytical tools will neither make decisions nor allocate lands for specific purposes; instead, they will assist decisionmaking by examining important ecological, social, and economic issues and by developing information relevant to decisions about forest plans and projects. The roads analysis tools will provide an ecological approach to transportation planning, will be flexible, and will allow a customized examination of individual landscapes and sites.

The agency intends to obtain scientific peer and technical review of these tools. However, since these tools are still under development and have yet to be peer reviewed, and since the analysis procedures themselves do not provide policy direction, it is both premature and inappropriate to include them in the final interim rule.

The final interim rule revises the circumstance that will lift the suspension before the 18-month termination. At paragraph (d)(3), the proposed rule would have lifted the suspension upon 18 months or upon the adoption of a revised road management policy whichever is first. Adoption of a revised road management policy provides a clearer termination point for the interim suspension than implementation of the analytical tools. Before adopting a revised road management policy, the Forest Service will provide public notice of its proposal and an opportunity for public comment.

Conclusions

Having considered the comments received, the Department is adopting a final interim rule to suspend road construction and reconstruction in certain unroaded areas for up to 18 months. Road construction and reconstruction will be suspended in certain unroaded areas, specifically in remaining unroaded portions of RARE II and land and resource management planning inventoried roadless areas, National Forest System unroaded areas of more than 1,000 acres contiguous to RARE II areas and forest plan inventoried roadless areas, unroaded areas of 1,000 acres or more contiguous to Wild components of the Wild and Scenic River System, or unroaded areas of other Federal lands larger than 5,000 acres. The final interim rule provides for certain exemptions, specifically unroaded areas encompassed by land and resource management plans revised since January 1, 1996, and unroaded areas encompassed by land and resource management plan amendments or revisions resulting from multi-Federal agency coordination using current available science and based on an eco-regional assessment. Also exempted are road construction or reconstruction in unroaded areas where roads are needed for public safety, to ensure access provided by statute, treaty, to address impending threats of flood, fire, or other catastrophic event, or pursuant to reserved or outstanding private rights. The final interim rule does not suspend or modify any existing permit, contract, or other instrument authorizing the occupancy and use of National Forest System land, and the rule specifically does not apply to road construction or reconstruction associated with the multi-Federal agency Yellowstone Pipeline project.

Regulatory Impact

The final interim rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review and determined that it will not have a significant adverse effect on the economy. Under the final interim rule, some projects may not be implemented within their planned time-frames, particularly such activities as timber sales and ecosystem restoration projects that require road construction or reconstruction. While the interim rule is in effect, some projects may be canceled, some projects may proceed to the extent that no road construction will occur, and some may be postponed until adoption of a revised road management policy. Application of the revised policy to these projects may eventually result in modifications or elimination. A number of factors contribute to difficulties in estimating the costs and benefits associated with deferred land management projects. There may be considerable variation in site-specific factors, projects are in various stages of development, planning and analysis often take longer than initially anticipated, and some project work can be shifted to sites outside unroaded areas subject to suspension or road construction or reconstruction.

The Forest Service estimates that, nationwide, of the 5.4 billion board feet of timber planned for sale during the 18-month period of the final interim rule, the timber volume actually offered may be reduced by an estimated 170 to 260 million board feet as a result of this final interim rule. This is less than 5 percent of the planned sales. Although the actual amounts are difficult to estimate, reductions in timber-volume is expected to result in corresponding reductions in employment and in payments-to-States. The reductions in timber-volume sold could affect between 270 to 420 direct timber jobs per year over 3 years. The estimated potential loss of payments-to-States is $6 to $8 million. However, the 1998 Supplemental Appropriations Rescission Act (Pub. L. 105–174) contains a provision requiring the Forest Service to compensate counties for loss of revenues that would have been provided from scheduled projects if the final interim rule were not implemented, or if substitute timber sales are not offered. The Forest Service expects that the Northern, Southern, and Intermountain Regions could experience a greater share of lost revenues than other geographic regions due to their higher dependence on unroaded areas for timber production. The losses could be mitigated by requirements of the 1998 Supplemental Appropriation Act. It is not possible to estimate the extent of the mitigation until implementation guidelines are established.

While project delays will have some adverse economic effects in the short-term, such effects will be offset by the benefits gained from the suspension. Those benefits will result from a reduced risk of erosion, landslides, and slope failure, all of which would threaten water quality in headwater streams within many of the included unroaded areas. The temporary suspension of road construction and reconstruction will also help prevent the introduction of noxious weed species, retain scenic and intrinsic values, and maintain important wildlife habitat and corridors. The transportation system analysis process will use the best available science and information about use trends during project planning. Resource managers and the public will better understand the possible effects of locating and constructing roads in unroaded areas.

Although it does result in costs associated with delays or deferrals in road construction or reconstruction, the suspension is limited to unroaded areas and will not extend beyond 18 months. The greatest impact of the final interim rule is the loss of an estimated $6 to $8 million annually, far less than the threshold of $100 million, and it is not expected to otherwise adversely affect the economy, worker productivity, competition, jobs, the environment, public health or safety, or State or local governments.

Moreover, the final interim rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and it is hereby certified that the final interim rule will not have a

significant economic effect on a substantial number of small entities as defined by that Act.

No Takings Implications

This final interim rule has been analyzed in accordance with the principles and criteria described in Executive Order 12630 and it has been determined not to pose the risk of a taking of constitutionally protected private property. Because it applies only to Federal lands and explicitly ensures access to private property pursuant to statute, or to outstanding or reserved rights, no constitutionally protected private property rights will be affected.

Civil Justice Reform Act

This final interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. It (1) preempts all State and local laws and regulations that are in conflict or which would impede its full implementation, (2) has no retroactive effect on existing permits, contracts, or other instruments authorizing the occupancy and use of National Forest System lands, and (3) does not require administrative proceedings before parties may file suit challenging its provisions.

Unfunded Mandates Reform

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Department has assessed the effects of this interim rule on state, local, and tribal governments and the private sector. This interim rule does not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Environmental Impacts

Based on the environmental assessment and comments received on the proposed interim rule, the Department has determined that there are no significant environmental impacts associated with adoption of this final interim rule. A copy of the environmental assessment and Finding of No Significant Impacts may be obtained on the World Wide Web at www.fs.fed/news/roads/ea.html or by writing the Director of Ecosystem Management Coordination, P.O. Box 96090, Washington, D.C. 20090, or by calling 202–205–0895.

Controlling Paperwork Burdens on the Public

This final interim rule does not contain any recordkeeping or reporting requirements or other information-collection requirements as defined in 5 CFR part 1320 and, therefore, imposes no paperwork burden on the public. Accordingly, review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects in 36 CFR Part 212

Highways and roads, National forests, Rights-of-way, and Transportation.

Therefore, for reasons set out in the preamble, Part 212 of Title 36 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 212 continues to read as follows:

Authority: 16 U.S.C. 551, 23 U.S.C. 205.

2. Add a new § 212.13 to read as follows:

PART 212—ADMINISTRATION OF THE FOREST DEVELOPMENT TRANSPORTATION SYSTEM

§ 212.13 Temporary suspension of road construction in unroaded areas.

(a) *Definitions.* The special terms used in this section are defined as follows:

(1) *Road.* A vehicle travel way of over 50 inches wide. As used in this section, a road may be *classified* or *unclassified.*

(i) *Classified road.* A road that is constructed or maintained for long-term highway vehicle use. Classified roads may be public, private, or forest development.

(A) *Public road.* A road open to public travel that is under the jurisdiction of and maintained by a public authority such as States, counties, and local communities.

(B) *Private road.* A road under private ownership authorized by an easement to a private party, or a road which provides access pursuant to a reserved or private right.

(C) *Forest development road.* A road wholly or partially within or adjacent to a National Forest System boundary that is necessary for the protection, administration, and use of National Forest System lands, which the Forest Service has authorized and over which the agency maintains jurisdiction.

(ii) *Unclassified road.* A road that is not constructed, maintained, or intended for long-term highway use, such as, roads constructed for temporary access and other remnants of short-term use roads associated with fire suppression, timber harvest, and oil, gas, or mineral activities, as well as travel ways resulting from off-road vehicle use.

(2) *Unroaded area.* An area that does not contain classified roads.

(3) *RARE II.* The acronym for the second Roadless Area Review and Evaluation conducted by the Forest Service in 1979 that resulted in an inventory of roadless areas considered for potential wilderness designation.

(b) *Suspensions.* Except as provided in paragraphs (c) and (d) of this section, new road construction projects, including temporary road construction, and road reconstruction projects are suspended within the following areas of the National Forest System:

(1) All remaining unroaded portions of RARE II inventoried roadless areas within the National Forest System, and all other remaining unroaded portions of roadless areas identified in a land and resource management plan prepared pursuant to the National Forest Management Act (16 U.S.C. 1604) that lie one-quarter mile or more beyond any existing classified road as of March 1, 1999;

(2) All National Forest System unroaded areas of more than 1,000 acres that are contiguous to remaining unroaded portions of RARE II inventoried roadless areas or contiguous to areas inventoried in land and resource management plans. For purposes of implementing this category of suspension, areas of 1,000 acres or more must have a common boundary of considerable length, provide important corridors for wildlife movement, or extend a unique ecological value of the established inventoried area;

(3) Roadless areas listed in Table 5.1 of the Southern Appalachian Area Assessment, Social/Cultural/Economic Technical Report, Report 4 of 5, July 1996;

(4) All National Forest System unroaded areas greater than 1,000 acres that are contiguous to congressionally-designated wilderness areas or that are contiguous to Federally-administered components of the National Wild and Scenic River System (16 U.S.C. 1274) which are classified as Wild; and

(5) All National Forest System unroaded areas greater than 1,000 acres that are contiguous to unroaded areas of 5,000 acres or more on other federal lands.

(c) *Exemptions.* Road construction and reconstruction projects are not subject to the suspension established by paragraph (b) of this section if they fall within one of the following unroaded areas:

(1) Unroaded areas within national forests that have a signed Record of Decision revising their land and resource management plans prepared pursuant to the National Forest Management Act (16 U.S.C. 1604) after January 1, 1996, and on which the

administrative appeals process under 36 CFR part 217 has been completed as of March 1, 1999;

(2) Unroaded areas within a National Forest that have a signed Record of Decision revising the land and resource management plan prepared pursuant to the National Forest Management Act (16 U.S.C. 1604) on which the administrative appeals process under 36 CFR part 217 has begun before or after March 1, 1999. (For these forests, any issues related to the construction of roads in unroaded areas will be addressed in the appeal decision, when appropriate.);

(3) Unroaded areas within the National Forest System encompassed by a land and resource management plan amendment or revision adopted before or during the period in which this section is effective, where such amendment or revision has been developed through multi-federal agency coordination using a science based eco-regional assessment;

(4) Road construction or reconstruction in unroaded areas where roads are needed for public safety, needed to ensure access provided by statute, treaty, or pursuant to reserved or outstanding rights; or needed to address an imminent threat of flood, fire, or other catastrophic event that, without intervention, would cause the loss of life or property.

(d) *Scope and applicability.* (1) This rule does not suspend or modify any existing permit, contract, or other instrument authorizing the occupancy and use of National Forest System land. Additionally, this rule does not suspend or modify any existing National Forest System land allocation decision, nor is this rule intended to suspend or otherwise affect other management activities or uses within unroaded areas in which road construction or reconstruction projects are suspended pursuant to paragraph (b) of this section.

(2) This rule does not suspend or modify road construction or reconstruction associated with the multi-federal agency Yellowstone Pipeline project.

(3) The suspensions established by paragraph (b) of this section remain in effect until the Forest Service, after giving appropriate public notice and opportunity to comment, adopts its revised road management policy, or 18 months from the effective date of this rule, whichever is first.

(e) *Effective date.* The suspension of road construction and reconstruction projects in unroaded areas as provided in paragraph (b) of this section is effective March 1, 1999.

Dated: February 2, 1999.

Mike Dombeck,

Chief, Forest Service.

[FR Doc. 99–3103 Filed 2–11–99; 8:45 am]

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Part IV

Environmental Protection Agency

40 CFR Part 52

Federal Rulemaking for the FMC Facility in the Fort Hall PM–10 Nonattainment Area; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket 24–7004; FRL–6231–1]

RIN 2060–AF84

Federal Rulemaking for the FMC Facility in the Fort Hall PM–10 Nonattainment Area

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) proposes to promulgate a Federal Implementation Plan (FIP) containing emission limits and work practice requirements that represent reasonably available control technology, along with related monitoring, recordkeeping, and reporting requirements, for particulate matter air pollution emitted from an elemental phosphorous facility owned and operated by FMC Corporation and located within the exterior boundaries of the Fort Hall Indian Reservation in southeastern Idaho (FMC or FMC facility). A portion of the Fort Hall Indian Reservation, known as the ''Fort Hall PM–10 nonattainment area,'' has been designated as a nonattainment area for the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers (PM–10), which pre-date the new PM NAAQS that were promulgated in 1997. The FMC facility is the only major stationary source of PM–10 located in the Fort Hall PM–10 nonattainment area.

Although there are other area sources and minor stationary sources of PM–10 in the Fort Hall PM–10 nonattainment area, EPA believes that these other sources have an insignificant impact on the violations of the pre-existing 24-hour PM–10 standard that have been recorded by the monitors located in the nonattainment area. EPA believes that the control strategy for FMC proposed by EPA in this rulemaking is necessary to ensure maintenance of air quality that protects public health during the transition period leading to implementation of the newly-promulgated PM standards and assist in bringing the Fort Hall PM–10 nonattainment area into attainment with the recently-promulgated PM NAAQS as expeditiously as practicable. If EPA later determines that sources other than FMC contribute to PM violations in the area, the Shoshone-Bannock Tribes or EPA will develop and impose appropriate controls on these other sources in the Fort Hall PM–10 nonattainment area.

EPA's 1997 PM NAAQS rulemaking established new standards for particulate matter with a diameter equal to or less than 2.5 microns and also revised the existing PM–10 standards. Today's proposal, however, does not directly address these new and revised standards. Rather, it addresses requirements under the pre-existing PM–10 standards, which are still in effect for a limited time, and the provisions of section 172(e) to which the Fort Hall PM–10 nonattainment area is subject during the transition toward implementation of the new and revised PM standards.

DATES: Written comments will be accepted until May 13, 1999.

EPA will hold a public hearing at the following time: FMC FIP Public Hearing, Thursday, March 18, 1999, 6:00 p.m. to 9:00 p.m.

ADDRESSES: Comments should be submitted (in duplicate if possible) to: Montel Livingston, SIP Manager, Environmental Protection Agency, Office of Air quality (OAQ–107), 1200 Sixth Avenue, Seattle Washington 98101.

EPA will hold a public hearing at the following location:

FMC FIP Public Hearing, Fort Hall Business Council Chambers, Agency and Bannock Roads, Fort Hall, Idaho 83202.

EPA also plans to hold a public workshop prior to the public hearing. The time, date, and location of the public workshop will be announced in local papers.

Docket: A copy of docket no. ID 24–7004, containing material relevant to EPA's proposed action, is available for public inspection and copying from 8:00 a.m. to 5:30 p.m. Eastern Standard Time, Monday through Friday, at EPA's Central Docket Section, Office of Air and Radiation, Room 1500 (M–6102), 401 M Street, SW., Washington, D.C. 20460, and between 8:30 a.m. and 3:30 p.m. Pacific Standard Time, at EPA Region 10, Office of Air Quality, 10th Floor, 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the docket is also available for review at the Shoshone-Bannock Tribes, Office of Air Quality Program, Land Use Commission, Fort Hall Government Center, Agency and Bannock Roads, Fort Hall, Idaho 83202. A reasonable fee may be charged for copies.

FOR FURTHER INFORMATION CONTACT: Steven K. Body, Office of Air Quality (OAQ–107), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, (202) 553–0782.

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I. Executive Summary

A. Background

The Fort Hall PM–10 nonattainment area is located in southeastern Idaho and consists of both trust and fee lands within the exterior boundaries of the Fort Hall Indian Reservation (Reservation). Until recently, it was part of the Power-Bannock Counties PM–10 nonattainment area, which also included State lands in Power and Bannock Counties, including the cities of Pocatello and Chubbuck.[1]

PM–10 monitors established on the Reservation in 1996 have recorded numerous exceedences of the pre-existing 24-hour PM–10 standard and document a violation of the pre-existing 24-hour PM-10 standard as of December 31, 1996, and continuing in subsequent years. The monitors also strongly suggest that the area is in violation of the pre-existing annual PM–10 NAAQS. Although EPA revised both the 24-hour and annual PM–10 standards on July 18, 1997 (62 FR 38651), the pre-existing PM–10 standards remain in effect in the Fort Hall PM–10 nonattainment area.[2] In addition, EPA believes there is a strong likelihood that the Fort Hall PM–10 nonattainment area is in violation of the revised 24-hour and annual PM–10 standards.

Consequently, the residents of the Fort Hall Indian Reservation continue to breathe unhealthy air. Particulate matter affects the respiratory system and can cause damage to lung tissue and premature death. The elderly, children, and people with chronic lung disease, influenza, and asthma are especially sensitive to high levels of particulate matter. As EPA concluded in promulgating the new and revised particulate matter NAAQS, the serious health effects associated with exposure to coarse particulate matter justified retaining PM–10 standards, in addition to fine particle, or PM–2.5, standards. *See* 62 FR 38651, 38677–679 (July 18, 1997). The highest PM–10 level reported from the monitors in the Fort Hall PM–10 nonattainment area is 433 μg/m3, a level almost three times the level of the pre-existing and revised 24-hour PM–10 NAAQS.

Based on available information, EPA believes that the primary, if not the sole, cause of the PM–10 problem in the Fort Hall PM–10 nonattainment area is primary PM–10 emissions from an elemental phosphorous facility owned and operated by FMC Corporation (FMC or FMC facility), which is located on fee lands within the Reservation and the nonattainment area.[3] The FMC facility emits more than 700 tons of PM–10 each year. Without substantial reductions in PM–10 emissions from FMC, the monitors located on the Reservation will continue to show violations of the pre-existing 24-hour PM–10 NAAQS and, in all likelihood, the revised 24-hour and annual PM–10 NAAQS, and the residents of the Fort Hall Indian Reservation will continue to breathe unhealthy air.

The Shoshone-Bannock Tribes have been developing a program for regulating sources of air pollution within the Fort Hall Indian Reservation since the early 1990s. Until February 1998, however, Indian tribes did not have authority under the Clean Air Act (CAA or Act) to regulate sources of air emissions and to carry out the requirements of the Act. Therefore, EPA, in close consultation with the Shoshone-Bannock Tribes, began in the early 1990s to develop a strategy for bringing what is now known as the Fort Hall PM–10 nonattainment area into attainment with the pre-existing PM–10 standards. Based on information indicating that the PM–10 violations on the Reservation were caused by PM–10 emissions from FMC, EPA and the Tribes focused their efforts on developing controls for FMC.

Although EPA has now passed regulations that allow the Shoshone-Bannock Tribes to request authorization from EPA to carry out Clean Air Act requirements within the Fort Hall Indian Reservation, including PM–10 planning requirements, the Tribes have advised EPA that they continue to support its efforts to develop and promulgate PM–10 control requirements for FMC because of the substantial resources EPA has already expended on this effort and because of the technical complexities of controlling PM–10 emissions from FMC. The Tribes have advised EPA that they will continue to develop and request EPA approval of a general air pollution program for sources within the Reservation, including any additional PM–10 controls for other PM–10 area sources and minor stationary sources that may be necessary to meet the anti-backsliding requirements of section 172(e) of the Act during the period of transition to implementation of the revised PM NAAQS and ultimately to attain the revised PM standards.

[1] As discussed in more detail below, the State land within the former Power-Bannock Counties PM–10 nonattainment area is now known as ''the Portneuf Valley PM–10 nonattainment area.''

[2] There are two pre-existing PM–10 NAAQS, a 24-hour standard and an annual standard. *See* 40 CFR 50.6 (1996). EPA promulgated these NAAQS on July 1, 1987 (52 FR 24672), replacing standards for total suspended particulate with new standards applying only to particulate matter up to ten microns in diameter (PM–10). The annual PM–10 standard is attained when the expected annual arithmetic average of the 24-hour samples for a period of one year does not exceed 50 micrograms per cubic meter (μg/m3). Attainment of the 24-hour PM–10 standard is determined by calculating the expected number of days in a year with PM–10 concentrations greater than 150 μg/m3. The 24-hour PM–10 standard is attained when the expected number of days with levels above the standard, averaged over a three-year period, is less than or equal to one. See 40 CFR 50.6 and 40 CFR part 50, appendix K. When EPA promulgated revised NAAQS for PM–2.5 and PM–10 in 1997, it provided that the pre-existing standards for PM–10 would remain in effect until certain prescribed events occur. *See* 40 CFR 50.6(d)(1998).

[3] A portion of the FMC facility is located on State lands. This issue is discussed in more detail below.

B. Revised Particulate Matter Standards

As mentioned earlier, on July 18, 1997, EPA promulgated revisions to both the annual and the 24-hour PM–10 standards and also established two new standards for particulate matter, both of which apply only to particulate matter equal to or less than 2.5 microns in diameter (PM–2.5). *See* 62 FR 38651. These standards became effective on September 16, 1997. Although the overall suite of promulgated particulate matter (PM) standards reflects an overall strengthening of the regulatory standards for particulate matter, the revised PM–10 standards, by themselves, effectively constitute a relaxation of the pre-existing PM–10 standards. As a consequence, areas that had not attained the pre-existing PM–10 standards at the time of the relaxation of the PM–10 NAAQS, such as the Fort Hall PM–10 nonattainment area, have become subject to CAA section 172(e). That section calls for promulgation by EPA of a rule that requires application of controls that are no less stringent than the controls that would have been required for areas that were designated nonattainment prior to the relaxation. In the preamble to the final rule establishing the new and revised PM standards, EPA stated that inherent in the promulgation of the revised set of PM standards and associated provisions is the revocation of the pre-existing PM–10 standards and associated provisions. However, the Agency decided that the pre-existing PM–10 standards would remain in effect (*i.e.,* revocation would be deferred) for a period of time after the effective date of the new standards to ensure maintenance of public health protection during the transition to the new standards. 62 FR at 38701. For areas that are subject to section 172(e), like the Fort Hall PM–10 nonattainment area, EPA provided that the pre-existing PM–10 standards would continue to apply until the Agency completed the rulemaking to establish the interim controls required under that section. EPA expects to propose a rule meeting the requirements of section 172(e) in early 1999. It should be understood that once EPA issues a final rule pursuant to section 172(e), the requirements of that rule—and not the pre-existing PM–10 standards which will be revoked at that time—will govern all areas subject to section 172(e), including the Fort Hall PM–10 nonattainment area. The section 172(e) rulemaking will also govern today's action because it proposes requirements intended to apply to areas like the Fort Hall PM–10 nonattainment area that had not attained the standard at the time of the relaxation. Therefore, although today's FIP proposal addresses the clear statutory requirement of section 172(e)(namely, that for subject areas controls be applied and implemented that are no less stringent than were applicable in areas designated nonattainment prior to the NAAQS relaxation), statements made in today's proposal that relate to other CAA requirements concerning the pre-existing 24-hour and annual PM–10 standards will be subject to interpretations established by EPA when it takes final action on the forthcoming section 172(e) rulemaking, which may in some cases require modifications to such statements.

References in today's FIP proposal to attainment requirements or attainment demonstrations applicable for the pre-existing PM–10 standards are being utilized by EPA primarily as a yardstick for determining the emissions reduction levels that are appropriate to achieve during this regulatory transition period in order to avoid backsliding as contemplated by section 172(e). Accordingly, EPA believes that the control requirements set forth in this proposed FIP for the FMC facility will be consistent with the requirements of the forthcoming section 172(e) rule, when that rule is promulgated and the pre-existing PM–10 standards are revoked. This FIP proposal requires application of controls that represent reasonably available control technology (RACT). This is consistent with the plain terms of section 172(e), because this is the same level of controls that would have been required prior to the relaxation of the PM–10 standards in states with moderate PM–10 nonattainment areas.

In the preamble to the rule that established the revised PM standards, EPA also indicated that, as part of its implementation policy during the period of transition from the pre-existing to the revised PM standards, it would not require current PM–10 nonattainment areas to undertake attainment demonstrations for the pre-existing PM–10 standards. Instead, the Agency said it would concentrate on getting approved into the SIPs for such areas the controls needed to ensure that healthy PM levels would be maintained during the transition period. *See* 62 FR at 38701. As noted above, however, EPA believes it remains appropriate to use emissions reduction targets that are commensurate with attainment levels for the pre-existing PM–10 standards in order to determine the adequacy of the adopted controls to protect the public's health. This is necessary for several reasons. First, it will take some time for states and EPA to identify the PM problems under the new and revised standards, to designate areas appropriately, and to develop effective means to address the PM problems. Also, as a threshold matter, states will need to accumulate the three years of ambient air quality data on which EPA regulations base most significant PM NAAQS. Another important reason is that the control requirements for a moderate PM–10 nonattainment area (*i.e.,* reasonably available control measures (RACM) and RACT) are traditionally determined by considering the attainment needs of the area. A state with such an area would typically prepare an attainment demonstration to determine the level by which emissions need to be reduced to meet the standards. It would then select a mix of reasonably available measures, consistent with EPA guidance, calculated to achieve that emissions reduction level. As applied to the Fort Hall PM–10 nonattainment area—an area for which no comprehensive PM implementation plan and control strategy has really ever been applied—and as applied to FMC in particular, the discussions throughout this FIP proposal regarding the relationship of the emissions reductions expected to be achieved through implementation of the proposed RACT-level controls to attainment of the pre-existing PM–10 standards are not included for purposes of demonstrating attainment of those standards. Rather, the discussion of the pre-existing PM–10 NAAQS serves the benchmark purpose described above of determining the appropriate RACT-level measures needed to be implemented in that area, both to maintain public health protection during the transition period as well as to assist in ultimately attaining the revised PM–10 standards. In summary, then, the fact that (1) These new and revised PM standards have now been promulgated, (2) there is a need for states and EPA to begin to transition from implementation under the pre-existing PM–10 standards towards implementation under the revised PM–10 standards, and (3) regulatory requirements for this area during the transition period will be governed by the statutory provisions of section 172(e), as interpreted by EPA, all have a direct bearing on the substance and content of the FIP that is being proposed today for the Fort Hall PM–10 nonattainment area.

C. FIP Proposal

In this proposal, EPA is exercising its discretionary authority under section 301(a) and 301(d)(4) of the CAA to promulgate such FIP provisions as are necessary or appropriate to protect air

quality within the Fort Hall Indian Reservation. EPA's ultimate goal, which is being initiated by this FIP proposal, is to ensure that all persons residing and working in and traveling through the Fort Hall PM–10 nonattainment area can breathe air that meets appropriate PM–10 levels.

EPA has used the PM–10 planning requirements applicable to states with PM–10 nonattainment areas, including the statutory requirements provided for in section 172(e) that apply to areas that are not attaining a NAAQS standard as of the date that standard is relaxed, as a guide in determining what is necessary or appropriate for the protection of air quality in the Fort Hall PM–10 nonattainment area. The Clean Air Act requires states to impose RACT on major stationary sources of PM–10 in moderate PM–10 nonattainment areas. *See* sections 172(c)(1) and 189(a)(1)(C) of the CAA. Section 172(e) requires areas that are subject to its provisions to implement controls that are no less stringent than the controls applicable to areas designated nonattainment prior to the relaxation of a standard.

This FIP proposal contains emission limits and work practice requirements that EPA believes represent RACT, along with related monitoring, recordkeeping, and reporting requirements, for PM–10 emissions from the FMC facility that emanate from the Fort Hall PM–10 nonattainment area. EPA believes that many sources at FMC currently employ RACT-level controls. For point sources that EPA believes currently employ RACT-level controls, the FIP proposes mass emissions limits based on current actual maximum daily emission rates from these point sources and opacity limits designed to keep PM–10 emissions at current levels. For area sources that EPA believes currently employ RACT-level controls, the FIP proposes opacity limits and work practice requirements designed to keep emissions at current levels.

The largest sources of PM–10 emissions at the FMC facility are the slag pit and related slag handling operations, the elevated secondary condenser and ground flares, and the calciners. EPA believes that these sources do not currently employ RACT-level controls, and that additional process changes and control technology will be necessary to achieve the emission limits and work practice requirements proposed in this notice as representing RACT for these sources. EPA also believes additional process changes and control technology will be necessary for the phosphorous loading dock and the furnace building to achieve the emission limits and work practice requirements proposed in this notice as representing RACT for these sources.

The controls required to comply with the proposed emission limits and work practice requirements will be costly—an estimated $49 million dollars in capital expenditures over the next three years and annual costs for monitoring, work practice requirements, recordkeeping, and reporting of up to $202,000. EPA nonetheless believes the controls needed to comply with the requirements of this proposed FIP are both technologically and economically feasible. In developing the FIP proposal, EPA has carefully evaluated alternative control technologies for each source at FMC, including the incremental emission reductions and estimated cost of installing, operating, and maintaining these alternative control technologies. In addition, in connection with the settlement of alleged violations of the Resource Conservation and Recovery Act at the FMC facility, FMC has agreed to expend more than $64[4] million in capital costs to implement 13 PM–10 reduction projects at the facility. Five of these projects include the controls that EPA believes are necessary to comply with the proposed FIP. EPA believes that the remaining eight projects will better enable FMC to comply with the requirements of the proposed FIP. FMC's commitment to install and operate the 13 PM–10 reduction projects for five years as part of the RCRA settlement is persuasive evidence that the control technology identified in this FIP proposal is both technologically and economically feasible.

EPA also believes that this FIP proposal is necessary in order to ensure that PM levels in the Fort Hall PM–10 nonattainment area do not endanger public health, and that emissions reductions will be achieved on a time frame that will contribute to attainment of the revised PM–10 NAAQS as expeditiously as practicable. To achieve these goals, EPA believes that PM–10 emissions from the FMC facility must be reduced by approximately 65%. EPA anticipates that the emission limitation and work practice requirements in this proposed FIP, when considered together, will result in an overall reduction in PM emissions of approximately 69%.

[4] The difference in the estimated amount of expenditures EPA believes is necessary to comply with the proposed FIP ($49 million) and the amount of capital expenditures FMC has agreed to incur under the RCRA consent decree ($64 million) is due to the fact that EPA believes that only five of the SEP projects are necessary in order to comply with the proposed FIP.

To further these objectives, EPA is proposing a rigorous compliance schedule. For sources that EPA believes currently employ RACT-level controls, the FIP proposes to require compliance with the proposed emission limits and work practice requirements 60 days after the effective date of the FIP. For those sources that EPA believes will require substantial modification in order to comply with the proposed emission limits and work practice standards, EPA proposes to give FMC time to complete the necessary engineering work, design, construction, and initial operation. EPA is proposing that all RACT control requirements necessary to maintain public health protection and contribute to attainment of the revised PM–10 standards in the Fort Hall PM–10 nonattainment area will be in place and fully operational by April 1, 2002. Many of the new controls should be in place well before that time. EPA does not expect PM values above the level of the revised PM–10 NAAQS to be recorded on the Tribal monitors after April 1, 2002. Because attainment of the PM–10 NAAQS requires three calendar years of clean data, however, the area may not be eligible for an attainment designation for the applicable PM–10 standards until after that date. Given the number and extent of the projects FMC will need to undertake to achieve compliance with the proposed FIP, as well as the amount of necessary expenditures, EPA believes that the proposed FIP schedule achieves implementation of RACT as expeditiously as practicable.

In addition to requiring the imposition of control requirements on sources of PM–10 emissions in PM–10 nonattainment areas subject to the pre-existing PM–10 standards, the Clean Air Act requires states with nonattainment areas to meet several other PM–10 planning requirements, such as enacting contingency measures, meeting quantitative milestones which demonstrate reasonable further progress toward attainment, implementing a permit program for construction and modification of new and modified major stationary sources, and imposing controls on major stationary sources of PM–10 precursors except where PM–10 precursors do not contribute significantly to nonattainment.

As discussed above, EPA is promulgating this FIP for FMC, a facility located in Indian country on the Fort Hall Indian Reservation, under the discretionary authority granted to EPA under sections 301(a) and 301(d)(4) of the CAA. Because of the longstanding PM–10 nonattainment problem in the Fort Hall PM–10 nonattainment area,

EPA believes it is necessary and appropriate to focus the efforts of this proposed FIP on the RACT-level emissions reduction requirements that EPA believes will maintain public health protection in the transition to the revised PM standards and that will ultimately assist in attaining those standards as expeditiously as practicable. Based on available information, EPA believes that implementation of RACT for sources of primary particulate matter at FMC, as proposed in this notice, will achieve these objectives. EPA will address the other PM–10 planning obligations that apply to states with PM–10 nonattainment areas subject to the pre-existing PM–10 NAAQS, as necessary or appropriate, in future rulemaking proposals.

D. Public Involvement in the FIP Process

EPA believes that public involvement at the local level is critical to the successful development and ultimate implementation of any air quality planning effort. To that end, EPA, the Idaho Department of Environmental Quality (IDEQ), and the Tribes established a Citizens Advisory Committee (CAC) in the early 1990s, made up of representatives of local elected officials, transportation planning organizations, and local citizen health and environmental organizations. The CAC actively participated in the oversight of the development of a comprehensive PM–10 plan for what was then called the ''Power-Bannock Counties PM–10 nonattainment area.'' This comprehensive plan was the basis for the state implementation plan (SIP) for the portion of the nonattainment area located on State lands (now known as the ''Portneuf Valley PM–10 nonattainment area''). EPA participated in the State's public workshops on the SIP and attended the public hearings on the SIP. In addition, EPA used the technical products developed by EPA, the Tribes, and IDEQ, as well as the State SIP, as a basis for developing this FIP proposal for FMC in the Fort Hall PM–10 nonattainment area.

EPA has also worked extensively with the Air Quality Program of the Shoshone-Bannock Tribes in the development of this FIP proposal and provided periodic updates to the Fort Hall Business Council, the governing body of the Tribes, on the development of the FIP. EPA has also held several public workshops and meetings seeking public input on the control strategy, both from members of the Shoshone-Bannock Tribes and citizens living on State lands adjacent to the Reservation. EPA has also made significant efforts to keep local elected officials and the congressional delegation informed of the implications of this proposed FIP and other related actions.

In September 1997, EPA conducted two public workshops on the general content and scope of the FIP. One workshop was held on the Fort Hall Indian Reservation and a second workshop was held in Pocatello. There were several themes that emerged during these public workshops. First, most citizens of the Fort Hall Indian Reservation and the Pocatello area want clean healthful air. Tribal members in particular expressed concern that the Federal government exercise its trust responsibility to ensure Clean Air Act protections on the Reservation. Commenters pointed out that, because air pollution from FMC is plainly visible, its impact is commonly perceived as extensive and regularly invokes critical attention in the local media. Because FMC is a major employer of Tribal members and residents of the Pocatello area, however, there is also a concern about the continued economic viability of FMC if costly air pollution and other environmental controls are required. EPA has never received any information from FMC to establish that the controls necessary to meet the PM–10 planning requirements of the Clean Air Act would require closure of the FMC facility. In fact, during the week the public workshops were held in Fort Hall and Pocatello in September 1997, the plant manager for the FMC facility stated in a radio broadcast that FMC had made a corporate commitment to expend $120 million for environmental controls at the FMC facility, of which approximately $85 million was targeted for air pollution control.

Finally, EPA has participated in several meetings of a Citizens Advisory Panel (CAP) facilitated through the Idaho State University and sponsored by FMC and J.R. Simplot, the two largest industrial facilities in the Fort Hall and Pocatello areas. The purpose of the CAP is to discuss environmental issues relating to the Fort Hall and Pocatello areas. EPA has attended several meetings of the CAP in order to present updates on the PM–10 planning process for the Fort Hall PM–10 nonattainment area and to seek public input.

After this proposed action is signed and published in the **Federal Register**, EPA will hold a public workshop. The workshop, which has not yet been scheduled, will provide an opportunity for EPA to explain to the community why it is proposing this FIP, what measures are included in the proposal, and who will potentially be impacted by the proposal. The workshop will also provide the community an opportunity to ask questions of EPA and to make suggestions with respect to this proposed action. EPA will announce the time, date, and location of the public workshop through local newspapers several weeks in advance of the workshop.

Following the public workshop, EPA will hold a public hearing on this FIP proposal from 6:00 p.m. to 9:00 p.m. on March 18, 1999, at the Chambers of the Fort Hall Business Council. During the public hearing, EPA will be taking formal comment on the FIP proposal. The public comment period will begin upon publication of the FIP proposal and will remain open for 30 days after the public hearing. EPA encourages everyone who has an interest in this proposed action to comment during the public comment period. EPA will consider all comments received during the public comment period.

II. Background

A. Clean Air Act Requirements

1. Designation and Classification

On the date of enactment of the 1990 Clean Air Act Amendments, PM–10 areas meeting the conditions of section 107(d) of the Act were designated nonattainment for the PM–10 NAAQS by operation of law. The Power-Bannock Counties PM–10 nonattainment area was designated as a PM–10 nonattainment area through this process. Once an area is designated nonattainment, section 188 of the CAA outlines the process for classification of the area and establishes the area's attainment date. In accordance with section 188(a), at the time of designation, all PM–10 nonattainment areas were initially classified as ''moderate'' by operation of law, with an attainment date of December 31, 1994. 56 FR 11101 (March 15, 1991).

A moderate area could subsequently be reclassified as ''serious'' under CAA section 188(b)(1), if, at any time, EPA determined that the area could not practicably attain the PM–10 NAAQS by the applicable attainment date. In addition, a moderate area would be reclassified by operation of law if EPA determined after the applicable attainment date that, based on actual air quality data, the area had not attained the standard by the attainment date. CAA section 188(b)(2).

Effective December 7, 1998, the Power-Bannock Counties PM–10 nonattainment area was split into two nonattainment areas at the boundary between the Fort Hall Indian Reservation and State lands. The Fort

Hall PM–10 nonattainment area consists of land within the former Power-Bannock Counties PM–10 nonattainment area that lies within the exterior boundaries of the Fort Hall Indian Reservation. The Portneuf Valley PM–10 nonattainment area consists of the remaining portion of the former Power-Bannock Counties PM–10 nonattainment area. *See* 63 FR 59722 (November 5, 1998). Both the Fort Hall PM–10 nonattainment area and the Portneuf Valley PM–10 nonattainment area continue to be classified as moderate PM–10 nonattainment areas.

2. EPA's Authority To Promulgate a FIP in Indian Country

The Clean Air Act Amendments of 1990 greatly expanded the role of Indian tribes in implementing the provisions of the Clean Air Act in Indian country. Section 301(d) of the Act authorizes EPA to issue regulations specifying the provisions of the Clean Air Act for which Indian tribes may be treated in the same manner as states. *See* CAA sections 301(d) (1) and (2). EPA promulgated the final rule under section 301(d) of the Act, entitled ''Indian Tribes: Air Quality Planning and Management,'' on February 12, 1998. 63 FR 7254. The rule is generally referred to as the ''Tribal Authority Rule'' or ''TAR''.

In the preamble to the proposed [5] and final rule, EPA discusses generally the legal basis under the CAA by which EPA and tribes are authorized to regulate sources of air pollution in Indian country. EPA concluded that the CAA constitutes a statutory grant of jurisdictional authority to Indian tribes that allows them to develop air programs for EPA approval in the same manner as states. 63 FR at 7254–7259; 59 FR 43958–43960.

EPA also concluded that the CAA authorizes EPA to protect air quality throughout Indian country, including on fee lands. *See* 63 FR 7262; 59 FR 43960–43961 (citing to CAA sections 101(b)(1), 301(a), and 301(d)). In fact, in promulgating the TAR, EPA specifically provided that, pursuant to the discretionary authority explicitly granted to EPA under sections 301(a) and 301(d)(4) of the Act, EPA

''shall promulgate without unreasonable delay such federal implementation plan provisions as are necessary or appropriate to protect air quality, consistent with the provisions of sections 304(a) and 301(d)(4), if a tribe does not submit a tribal implementation plan meeting the completeness criteria of 40 CFR part 51, Appendix V, or does not receive EPA approval of a submitted tribal implementation plan.''

63 FR at 7273 (codified at 40 CFR 49.11(a)).[6]

It is EPA's policy to aid tribes in developing comprehensive and effective air quality management programs by providing technical and other assistance to them. EPA recognizes, however, that just as it required many years to develop state and federal programs to cover lands subject to state jurisdiction, it will also require time to develop tribal and federal programs to cover reservations and other lands subject to tribal jurisdiction. 59 FR at 43961.

The Shoshone-Bannock Tribes have expressed a strong interest in seeking authority under the TAR to regulate sources of air pollution located on the Reservation under the Clean Air Act. Based on discussions with the Tribes, however, EPA believes that it will be at least several months before the Tribes will be ready to seek authority under the TAR to assume Clean Air Act planning responsibilities and that, when they do so, the Tribes intend to build their capacity and seek authority for the various Clean Air Act programs over time, rather than all at once. The Tribes have advised EPA that they continue to support EPA's efforts to impose such controls on FMC as are necessary to bring the Fort Hall PM–10 nonattainment area into attainment with the PM–10 NAAQS as quickly as possible, notwithstanding the recent promulgation of the TAR.

Therefore, in this proposed FIP, EPA is exercising its discretionary authority under section 301(a) and 301(d)(4) of the CAA and 40 CFR 49.11(a) to promulgate such FIP provisions as are necessary or appropriate to protect air quality within the Fort Hall Indian Reservation. The Shoshone-Bannock Tribes have not submitted a tribal implementation plan to address PM–10 emissions from FMC and have indicated to EPA that they prefer to have EPA address PM–10 emissions from FMC at this time. Given the longstanding air quality concerns in the area, EPA believes that the proposed FIP provisions are both necessary and appropriate to protect air quality on the Reservation.

3. Moderate Area Planning Requirements for States

The air quality planning requirements for states with PM–10 nonattainment areas under the pre-existing NAAQS are set out in subparts 1 and 4 of title I of the Clean Air Act. EPA has issued a ''General Preamble'' describing EPA's preliminary views on how the Agency intends to review state implementation plans and SIP revisions submitted by states under title I of the Act, including those state submittals containing moderate PM–10 nonattainment area SIP provisions.[7] Although these moderate area planning requirements are not directly applicable to EPA in this rulemaking, EPA believes it is appropriate to use the planning requirements applicable to states with PM–10 nonattainment areas as a guide where, as here, EPA is acting to ensure maintenance of healthy PM air quality within Indian country through direct federal implementation.

Those states containing initial moderate PM–10 nonattainment areas were required to submit, among other things, the following provisions by November 15, 1991:

(a) Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented no later than December 10, 1993 (CAA sections 172(c)(1) and 189(a)(1)(C));

(b) Provisions to assure implementation of RACT on major stationary sources of PM–10 precursors except where EPA has determined that such sources do not contribute significantly to exceedences of the PM–10 standards (CAA section 189(e));

(c) Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 or a demonstration that attainment by that date is impracticable (CAA section 189(a)(1)(B));

(d) For plan revisions demonstrating attainment, quantitative milestones which are to be achieved every three years and which demonstrate reasonable further progress (RFP), as defined in section 171(l), toward attainment by the applicable attainment date (CAA section 189(c));

[5] *See* 59 FR 43956 (August 25, 1994).

[6] In the preamble to the final TAR, EPA explained that it believed it was inappropriate to treat tribes in the same manner as States with respect to section 110(c) of the Act, which directs EPA to promulgate a FIP within two years after EPA finds a state has failed to submit a complete state plan or within two years after EPA disapproval of a state plan. In lieu of section 110(c), EPA promulgated 40 CFR 49.11(a) to clarify that EPA will continue to be subject to the basic requirement to issue any necessary or appropriate FIP provisions for affected tribal areas within some reasonable time. *See* 63 FR 7264–7265.

[7] *See* ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' (General Preamble) 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992).

(e) For plan revisions demonstrating impracticability, such annual incremental reductions in PM–10 emissions as are required by part D of the Act or may reasonably be required by the Administrator for the purpose of ensuring attainment of the PM–10 NAAQS by the applicable attainment date (CAA sections 172(c)(2) and 171(1));

(f) A permit program for the construction and operation of new and modified major stationary sources of PM–10 (*see* Section 189(a) of the Act); and

(g) Contingency measures, which become effective without further action by EPA upon a determination that the area has failed to achieve reasonable further progress or to attain the PM–10 NAAQS by the attainment date (*see* Section 172(c)(9) of the Act).

Moderate area plans were also required to meet the generally applicable SIP requirements for reasonable notice and public hearing under section 110(a)(1); necessary assurances that the implementing agencies have adequate personnel, funding and authority under section 110(a)(2)(E)(i) and 40 CFR 51.280; and the description of enforcement methods as required by 40 CFR 51.111, and EPA guidance implementing these provisions.

4. Serious Area Planning Requirements for States

PM–10 nonattainment areas under the pre-existing NAAQS that are reclassified as serious under section 188(b)(2) of the Act (for failing to attain by the applicable attainment date) are required to submit, within 18 months of the area's reclassification, SIP provisions providing for, among other things, the adoption and implementation of best available control measures (BACM), including best available control technology (BACT), for PM–10 no later than four years from the date of reclassification. The SIP must also contain a demonstration that its implementation will provide for attainment of the PM–10 NAAQS. These requirements are in addition to the moderate PM–10 nonattainment requirements of RACT/RACM. These and other requirements applicable to states with serious PM–10 nonattainment areas are discussed in more detail in EPA's guidance document, ''State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to Preamble for Implementation of Title I of the Clean Air Act Amendments of 1990,'' 59 FR 41988 (August 16, 1994).

B. History of PM–10 Planning in the Fort Hall PM–10 Nonattainment Area

1. Background

The Power-Bannock Counties PM–10 nonattainment area was designated nonattainment for the pre-existing PM–10 NAAQS and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act upon enactment of the Clean Air Act Amendments of 1990 (Act or CAA). *See* 40 CFR 81.313 (PM–10 Initial Nonattainment Areas); *see also* 55 FR 45799 (October 31, 1990); 56 FR 11101 (March 15, 1991); 56 FR 37654 (August 8, 1991); 56 FR 56694 (November 6, 1991). For an extensive discussion of the history of the designation of the Power-Bannock Counties PM–10 nonattainment area, please refer to the discussion at 61 FR 29667, 29668–29670 (June 12, 1996). The original attainment date for the area was December 31, 1994. The attainment date was later extended to December 31, 1995, and then to December 31, 1996, under the authority of section 188(d) of the Act. *See* 61 FR 20730 (May 8, 1996) (first one-year extension); 61 FR 66602 (December 18, 1996)(second one-year extension).

Effective December 7, 1998, the Power-Bannock Counties PM–10 nonattainment area was split into two nonattainment areas at the boundary between the Fort Hall Indian Reservation and State lands: the Fort Hall PM–10 nonattainment area and the Portneuf Valley PM–10 nonattainment area. For a more detailed discussion of the rationale for EPA's decision to split the Power-Bannock County PM–10 nonattainment area into two separate PM–10 nonattainment areas, please refer to the discussion at 63 FR 33597 (June 19, 1998)(proposed action) and 63 FR 59722 (November 5, 1998)(final action). Both the Fort Hall PM–10 nonattainment area and the Portneuf Valley PM–10 nonattainment area continue to be classified as moderate PM–10 nonattainment areas.

The boundary between the two nonattainment areas runs through an area known as the ''industrial complex,'' which is comprised of two major stationary sources of PM–10. FMC is located primarily on fee lands within the exterior boundary of the Fort Hall Indian Reservation and primarily within the Fort Hall PM–10 nonattainment area.[8] J.R. Simplot Corporation (Simplot) is located on State lands immediately adjacent to the Reservation in the Portneuf Valley PM–10 nonattainment area.

2. PM–10 Planning for the Portneuf Valley PM–10 Nonattainment Area

After the Power-Bannock Counties PM–10 nonattainment area was designated nonattainment, IDEQ, the Shoshone-Bannock Tribes, and EPA began to work together in the early 1990s to prepare the technical elements needed to bring the area into attainment and meet the planning requirements of title I of the Act. Based on these technical products, IDEQ, along with several local agencies, developed and implemented control measures on PM–10 sources in what is now known as the Portneuf Valley PM–10 nonattainment area. The State submitted these control measures to EPA in 1993 as a moderate PM–10 nonattainment state implementation plan revision under section 189(a) of the Act. Although the State had, in the past, sought to regulate sources on fee lands within the Fort Hall Indian Reservation,[9] the SIP revision submitted by the State in May 1993 did not purport to impose control requirements on FMC or other sources on fee or trust lands within the exterior boundaries of the Reservation.

The control measures submitted by the State include a comprehensive residential wood combustion program, including a mandatory woodstove curtailment program; stringent controls on fugitive road dust, including controls on winter road sanding and a limited road paving program; and a revised operating permit for the J.R. Simplot facility, the only major stationary source of PM–10 on State lands within the nonattainment area.

EPA has not yet taken final action to approve the State's moderate PM–10 SIP for the area. EPA has previously stated, however, based on EPA's preliminary review in the context of approving the State's requests for extensions of the attainment date, that these control measures substantially meet EPA's guidance for RACM, including RACT, for sources of primary particulate. *See* 61 FR 66602, 66604–66605 (December 18, 1996). EPA will take action on IDEQ's SIP revision for the Portneuf

[8] A small portion of the FMC facility extends on to State lands. The only PM–10 sources of potential significance on this portion of FMC property (*i.e.*, on State lands) are a few raw materials piles and a small number of unpaved access roads, which sources collectively account for less than one percent of total PM–10 emissions from the FMC facility. The limits proposed in this notice do not apply to the portion of the FMC facility on State lands. EPA expects Idaho to address the sources at FMC on State lands in a SIP revision.

[9] Prior to the 1990 amendments to the Clean Air Act, IDEQ had asserted regulatory authority over the sources of air pollution on fee lands in the Fort Hall Reservation, most notably, FMC.

Valley PM–10 nonattainment area in a separate rulemaking.

3. PM–10 Planning for the Fort Hall PM–10 Nonattainment Area

Using the technical products jointly developed by IDEQ, the Tribes, and EPA, EPA began to develop, in close consultation with the Tribes, a control strategy for what is now known as the Fort Hall PM–10 nonattainment area. As stated above, EPA and the Tribes believe that the primary, if not sole, cause of the continued PM–10 violations that have been recorded on the PM–10 monitors located within the Reservation are PM–10 emissions from the FMC facility. Therefore, in developing the control strategy, EPA and the Tribes focused on developing control requirements for PM–10 emissions from FMC.

At the same time, the Tribes began developing the infrastructure for running a tribal air quality program, including hiring staff, enacting authorizing legislation, drafting air quality regulations, establishing an air monitoring network, and participating in regional air quality planning efforts. The Tribes were very interested in seeking authority to regulate sources of air pollution within the exterior boundaries of the Fort Hall Indian Reservation under the Clean Air Act once EPA promulgated authorizing regulations under section 301(d) of the CAA.

Originally, it was thought that a PM–10 control strategy for FMC would be completed before promulgation of the TAR, that is, before the Tribes were in a position to obtain authority under the Clean Air Act to carry out PM–10 planning within the Reservation. For this reason, EPA took the lead in developing a PM–10 control plan for what is now known as the Fort Hall PM–10 nonattainment area, and, in particular, developing a control strategy for FMC, with the intent of promulgating a Federal Implementation Plan for FMC in close consultation with the Tribes. Because of several setbacks in the planning process, however, EPA was not able to promulgate or even propose a FIP for the area before the TAR was promulgated in February 1998.

Because of resource constraints, the Tribes have advised EPA they intend to build their capacity and seek authority for the various Clean Air Act programs under the TAR over time, rather than all at once. In light of the substantial resources EPA has already expended in developing a control strategy for FMC and the technical complexities of controlling PM–10 emissions from FMC, the Tribes have requested that EPA continue with the development and promulgation of a FIP for the FMC facility, even though the Tribes now have the ability to seek authority to regulate FMC under the Clean Air Act. The Tribes have advised EPA that they will continue to develop and request EPA approval of a general air pollution program for sources within the Reservation, including any additional PM controls for other PM sources (*e.g.*, area sources and minor stationary sources) that may be determined to be necessary to protect air quality.

EPA believes that, in circumstances such as exist here, it is appropriate for EPA to step in and fill the current gap in Clean Air Act protection by direct federal implementation of Clean Air Act requirements, in this case, implementation of measures to control PM–10 emissions from the FMC facility originating within the Reservation. The Tribes have not submitted a tribal implementation plan to control PM–10 emissions for FMC and have indicated to EPA that the Tribes prefer that EPA take the lead in this area at this time. EPA is therefore exercising its discretionary authority under sections 301(a) and 301(d)(4) of the Act and 40 CFR 49.11(a) to promulgate a FIP containing control measures and other requirements for the FMC facility. EPA is proposing these emission limitations and related control requirements to provide federally-enforceable PM–10 requirements on FMC in accordance with the Clean Air Act provisions specifically calling for the implementation of control measures in PM–10 nonattainment areas. *See, e.g.*, CAA section 189(a)(1)(C). EPA believes direct federal implementation of control measures is necessary and appropriate to ensure maintenance of healthy air quality in Indian country and is proposing to act here to improve air quality in the Fort Hall PM–10 nonattainment area during the transition to new PM standards.

4. Portneuf Environmental Council Lawsuit

On November 20, 1997, the Portneuf Environmental Council (PEC) filed suit against EPA alleging that EPA had failed to make a finding whether the Power-Bannock Counties PM–10 nonattainment area had attained the PM–10 NAAQS by the December 31, 1996, extended attainment date, as provided for in CAA section 188(b)(2)(A). During settlement discussions, PEC indicated that it was considering amending its complaint to allege that EPA has unreasonably delayed promulgation of a FIP addressing PM–10 planning requirements for what is now known as the Fort Hall PM–10 nonattainment area, and, more specifically, for failing to impose controls on PM–10 emissions from FMC.

As part of the settlement with PEC, EPA agreed to sign a **Federal Register** notice proposing a FIP to control PM–10 emissions in the area by January 31, 1999. EPA also agreed to take final action on the FIP proposal no later than July 31, 2000. A copy of the settlement agreement between EPA and PEC is in the docket. Although EPA had been working on a FIP proposal for the FMC facility in order to ensure attainment of the PM–10 NAAQS long before the PEC filed its suit against EPA, in issuing this proposal, EPA is also responding to PEC's lawsuit and the resulting settlement agreement between EPA and PEC.

5. Proposed Finding of Failure To Attain and Reclassification to Serious

On June 19, 1998, EPA published a Federal Register notice in which EPA proposed to make a finding that the Fort Hall PM–10 nonattainment area failed to attain the PM–10 NAAQS by the applicable attainment date of December 31, 1996. If EPA takes final action on that proposal, the Fort Hall PM–10 nonattainment area would be reclassified as a serious PM–10 nonattainment area by operation of law under section 188(b)(2) of the Act. In general, the serious area planning requirements are in addition to, and do not take the place of, the moderate area planning requirements. As noted earlier, the outcome of the final action will likely depend on determinations made by EPA when it promulgates the section 172(e) rule.

C. Air Quality Monitoring Data

1. Tribal Monitoring Sites

The former Power-Bannock Counties PM–10 nonattainment area was originally designated nonattainment for PM–10 based on monitors located on State lands within the nonattainment area that showed violations of the pre-existing 24-hour and annual PM–10 standard in the late 1980s and early 1990s. Although there were no PM–10 monitors located on the Reservation at this time, dispersion modeling conducted to support the PM–10 planning efforts for the area predicted high PM–10 concentrations on the Reservation in the vicinity of FMC in what is now known as the Fort Hall PM–10 nonattainment area.

In the mid-1990s, the Tribes requested and EPA granted the Tribes additional program support grant funds to enable the Tribes to establish their own

monitoring stations in order to collect ambient air quality data representative of conditions on the Reservation and to generate data to support Tribal air quality planning efforts. This monitor, called the ''Sho-Ban site,'' is located approximately 100 feet north of the FMC facility across a frontage road. Due to operational problems with the sampler and quality assurance problems, valid data was not reported for this monitor until October 1, 1996. Also in October 1996, the Tribes initiated monitoring at two new sites. The ''primary site'' is located approximately 100 feet north of the FMC facility across the frontage road, approximately 600 feet east of the Sho-Ban site and approximately 600 feet from the boundary between the Fort Hall Indian Reservation and State lands. Both the Sho-Ban and primary sites are located in the area of expected maximum concentrations of PM–10 in the ambient air. The ''background site'' is located approximately one and one-half miles southwest of the FMC facility upwind of the predominant wind direction from the industrial complex.

All three Tribal monitoring sites are owned by the Tribes and operated by a contractor for the Tribes. The Tribal monitors meet EPA SLAMS network design and siting requirements, set forth at 40 CFR part 58, appendices D and E. A description of the monitoring network and instrument siting relative to the EPA SLAMS siting criteria, as specified in 40 CFR part 58, appendices D and E, can be found in the technical support document (TSD) and the air quality data report in the docket for this proposal.

The air quality data for the period from October 8, 1996, to December 31, 1996, was validated by the Shoshone-Bannock Tribes. EPA has reviewed the air quality data collected and reported by the Tribes during this period and quality assured the data for precision and accuracy prior to entering the data into the AIRS data base. In addition, a contractor with extensive experience in operating large state monitoring networks conducted an independent audit of the Tribal monitoring data. The audit included a review of both the sampling effort and filter analysis, and concluded that the data reported by the Tribes during 1996 and 1997 was valid and reliable data.

Both the Sho-Ban and primary sites have recorded numerous PM–10 concentrations above the level of the pre-existing 24-hour PM–10 NAAQS since October 1996. Table 1 lists each of the monitoring sites in the Fort Hall PM–10 nonattainment area where the 24-hour PM–10 NAAQS was exceeded between 1994 and 1997. Table 2 lists the concentration, in micrograms per cubic meter, of each exceedence.

TABLE 1.—FORT HALL PM–10 MONITORING DATA—1994, 1995, 1996

Site	Year	Number of exceedences	Expected exceedences	3 year average
Primary	1994	No data	Assume 0	Assume 0.
	1995	No data	Assume 0	Assume 0.
	1996	18	20.96	7.0.
	1997	19	20.1	13.69.
Sho-Ban	1994	No data	Assume 0	Assume 0.
	1995	No data	Assume 0	Assume 0.
	1996	9	11.34	3.78.
	1997	12	14	8.4.
Background Site	1994	No data	Assume 0	Assume 0.
	1995	No data	Assume 0	Assume 0.
	1996	0	0.00	0.00.
	1997	1	1.05	.35

TABLE 2.—PM–10 EXCEEDENCES AT TRIBAL MONITORS

Date	Primary site (μg/m3)	Sho-ban site (μg/m3)	Background site (μg/m3)
Oct. 10, 1996	*165	118	56
Oct. 16, 1996	*199	ND	57
Oct. 18, 1996	*184	*193	ND
Oct. 22, 1996	*200	ND	7
Oct. 24, 1996	*229	ND	ND
Nov. 17, 1996	124	*245	3
Nov. 18, 1996	*277	85	1
Nov. 19, 1996	*420	135	5
Nov. 28, 1996	109	*163	8
Dec. 3, 1996	*167	128	8
Dec. 4, 1996	90	*199	9
Dec. 9, 1996	*184	*199	3
Dec. 10, 1996	132	*208	2
Dec. 15, 1996	*219	53	1
Dec. 20, 1996	*156	ND	18
Dec. 24, 1996	*174	36	2
Dec. 25, 1996	*174	56	1
Dec. 26, 1996	*317	111	0
Dec. 27, 1996	*236	48	0
Dec. 29, 1996	*290	*282	0
Dec. 30, 1996	*187	*293	3
Dec. 31, 1996	*186	*442	2
Jan. 1, 1997	*268	*409	5
Jan. 2, 1997	*161	94	ND
Jan. 22, 1997	*16	ND	1

TABLE 2.—PM–10 EXCEEDENCES AT TRIBAL MONITORS—Continued

Date	Primary site (µg/m3)	Sho-ban site (µg/m3)	Background site (µg/m3)
Jan. 25, 1997	13	ND	*246
Feb. 14, 1997	*222	35	2
Feb. 17, 1997	*198	45	6
Feb. 19, 1997	*215	*259	2
Mar. 1, 1997	*223	*221	6
Mar. 2, 1997	*196	91	4
Mar. 9, 1997	*239	139	2
Mar. 10, 1997	*337	95	3
Mar. 11, 1997	*206	77	4
Mar. 18, 1997	77	*173	9
Mar. 26, 1997	*166	ND	26
Mar. 30, 1997	96	*234	10
Jun. 3, 1997	87	*167	23
Aug. 26, 1997	86	*184	33
Sept. 13, 1997	145	*230	69
Sept. 14, 1997	128	*346	ND
Sept. 15, 1997	*167	91	25
Sept. 26, 1997	*222	79	42
Oct. 3, 1997	186	*156	2
Oct. 4, 1997	*254	128	19
Oct. 5, 1997	*273	46	10
Oct. 8, 1997	80	200	10
Oct. 9, 1997	68	*271	30
Dec. 17, 1997	*158	67	1
Dec. 27, 1997	*160	59	101
Dec. 29, 1997	*245	69	3

ND = No Data Reported
• = level above 24-hour standard

According to 40 CFR part 50, the pre-existing 24-hour PM–10 NAAQS is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 µg/m3, averaged over three years, is equal to or less than one. Because the Tribal monitoring sites did not begin full operation until October 1996, the data base is less than the three years of data generally needed for a determination of compliance with the pre-existing 24-hour PM–10 NAAQS under 60 CFR 50.6. Nevertheless, the number of PM–10 concentrations above the level of the 24-hour PM–10 NAAQS between October 8, 1996, and December 31, 1996 results in the Sho-Ban and primary monitors showing a violation of the pre-existing 24-hour PM–10 NAAQS as of the December 31, 1996 attainment date for the area. Appendix K of 40 CFR part 50 contains ''gap filling'' techniques for situations where less than three complete years of data are available. In brief, that procedure allows a determination of non-compliance with a standard if it can be unambiguously demonstrated that a violation occurred. With respect to the Sho-Ban and primary sites, the expected exceedence rate of the 24-hour standard, averaged over the years 1994, 1995, and 1996, for each site is substantially greater than the 1.1 allowed for under the pre-existing PM–10 NAAQS, even if the days during which the monitors did not operate or collect valid data had reported zero PM–10 levels. For example, the expected exceedence rate for 1996 was 20.96 at the primary site and 11.34 at the Sho-Ban site. When this rate is averaged with an assumed zero for 1994 and 1995, the three-year average expected exceedence rate of 7.0 for the primary site and 3.78 for the Sho-Ban site are above the 1.1 required to show attainment of the pre-existing 24-hour PM–10 NAAQS. In other words, even if there were zero exceedences from January 1, 1994, to October 8, 1996, a violation of the standard would have occurred because of the number of exceedences that occurred from October 8, 1996, to December 31, 1996. EPA therefore believes that the Sho-Ban and primary monitors document a violation of the pre-existing 24-hour NAAQS for PM–10 under 40 CFR 50.6 using calendar year data from 1994, 1995, and 1996.

EPA also believes that the Sho-Ban and primary monitors document a violation of the pre-existing 24-hour NAAQS for PM–10 as of December 1997 (using calendar year data from 1995, 1996, and 1997). The primary site recorded exceedences of the pre-existing PM–10 standard on 19 days during 1997, resulting in an expected exceedence rate for 1997 of 20.1. Similarly, the Sho-Ban site recorded exceedences of the pre-existing standard on 12 days during 1997, resulting in an exceedence rate of 14. The three-year average of exceedence rates for calendar years 1995, 1996, and 1997 were 13.69 and 8.4, respectively, for the primary and Sho-Ban sites. The PM–10 values recorded on the Tribal monitors in 1998 have been fairly consistent with the values recorded during 1996 and 1997.

None of the Tribal monitors has collected sufficient data to make an attainment determination with respect to the pre-existing annual PM–10 standard. Generally, three years of data must be collected in order to calculate the three-year average of each year's annual average. The 1997 annual average recorded at the primary site, however, was 66.3 µg/m3, approximately 25% above the annual PM–10 standard, and strongly suggests that a violation of the pre-existing annual standard will be documented once three years of data has been collected at the Tribal monitors.

As discussed above, EPA promulgated revised PM–10 standards on July 18, 1997. *See* 62 FR 38651. Although the levels of the 24-hour and annual standards remain unchanged, there has been a change in the statistical form for determining compliance with the 24-hour NAAQS (from an expected exceedence rate to averaging the 99th percentile concentration from three

years of data) and a change in the procedures for reporting PM–10 concentrations at reference conditions to PM–10 concentrations at local temperature and pressure. Determining compliance with the revised PM–10 standards, even the revised 24-hour PM–10 standard, now requires three calendar years of data. Because the Tribal monitors have only been collecting valid data since the last quarter of 1996, there is insufficient data at this time to conclude with certainty that the Tribal monitors violate the revised PM–10 standards. Nonetheless, after converting previously reported PM–10 concentrations to local temperature and pressure and calculating the 99th percentile of the data base for each site and the arithmetic mean for each site for each year, EPA believes there is a strong likelihood that the Tribal monitors will document violations of the revised 24-hour and annual PM–10 standards unless there are significant reductions in PM–10 emissions from the FMC facility. The 99th percentile PM–10 concentrations for 1997 were 231 μg/m3 for the primary site and 243 μg/m3 for the Sho-ban site, well above the 24-hour standard of 150 μg/m3. Similarly, the arithmetic annual mean for 1997 was 60 μg/m3 for the primary, again, well above the annual standard of 50 μg/m3. The arithmetic annual mean for 1997 for the Sho-Ban site was 46 μg/m3, just below the level of the standard.

Please refer to the air quality data report and the TSD in the docket for further discussion and analysis of the air quality data.

2. PM–10 Precursors

Section 189(e) of the Act states that the control requirements applicable under SIPs to major stationary sources of PM–10 must also be applied to major stationary sources of PM–10 precursors, unless EPA determines such sources do not contribute significantly to PM–10 levels which exceed the PM–10 standard in the area.

Not all particulate in the air is directly emitted as particulate from emission sources. Particulate can also be formed in the air through complex chemical processes involving emission of gaseous pollutants called ''precursor gasses'', or ''precursors''. The particulate formed in the air are generally referred to as ''secondary aerosol.'' Precursor gasses of concern in the Fort Hall PM–10 nonattainment area and the Portneuf Valley PM–10 nonattainment area include sulfur dioxide, oxides of nitrogen, and ammonia. The secondary aerosol formed in the atmosphere are ammonium sulfate and ammonium nitrate.

At the beginning of the PM–10 planning process for the former Power-Bannock Counties PM–10 nonattainment area, PM–10 precursors were not thought to contribute to PM–10 levels which exceeded the PM–10 standard. In the winter of 1992, however, the State of Idaho began to analyze particulate matter collected on the PM–10 filters at the State monitoring sites for secondary aerosol contribution. Analysis of the particulate collected on the filters by the State in January 1993, including on the date of an exceedence on January 7, 1993, showed that ammonium sulfate and ammonium nitrate, which are PM–10 precursors, constituted approximately 60% of the measured PM–10 mass. Filter samples collected on other days with high PM–10 concentrations were selected from the total of a year's routine monitoring at the State monitoring sites and analyzed for secondary aerosol fractions. The results indicated that secondary aerosol was a significant fraction of the total PM–10 mass loading only during cold stagnant winter days with high relative humidity. High PM–10 concentrations measured and analyzed during other meteorological conditions did not have a significant aerosol contribution. This new information necessitated a reevaluation of the contribution of PM–10 precursors to the nonattainment problem in the former Power-Bannock Counties PM–10 nonattainment area. Accordingly, in conjunction with EPA and the Tribes, the State developed a work plan for analyzing and addressing the contribution of PM–10 precursors to the nonattainment problem in the Power-Bannock Counties PM–10 nonattainment area.

Since PM–10 precursors were first identified in particulate samples collected in January 1993 from the State monitors as a potential contributor to the nonattainment problem in the former Power-Bannock Counties PM–10 nonattainment area, however, no levels above the standard have been recorded at any of the monitors located on State lands in what is now known as the Portneuf Valley PM–10 nonattainment area. Instead, it appears that PM–10 resulting from precursor emissions represent a significant fraction of the total PM–10 mass loading on the monitors located on State lands only during very specific and rare meteorological conditions—cold stagnant winter days with relative high humidity. Based on the fact that the State monitors have not recorded an exceedence since January 1993, that there have been only two times between 1986 and 1997 in which violations of the PM–10 NAAQS on the State monitors have been attributed to PM–10 precursors, and that all State monitoring sites have attained the standard, it does not appear that major stationary sources of PM–10 precursors contribute significantly to PM–10 levels which exceed the standard within the Portneuf Valley PM–10 nonattainment area.

With respect to the Fort Hall PM–10 nonattainment area, based on data from the State monitors that show secondary aerosol reaches its highest levels at the monitoring sites furthest away from the industrial complex, EPA would not expect PM–10 precursors to contribute significantly to PM–10 levels that exceed the standard on the Tribal monitors, which are located near the industrial complex. In order to confirm the contribution of PM–10 precursors to the exceedences that have been recorded on the Tribal monitors, however, EPA is conducting additional chemical analysis of filters collected from the Tribal monitors as part of a comprehensive study of the types of particles and their chemical composition collected at the Tribal monitors. If the results of this study demonstrate that PM–10 precursors from major stationary sources contribute significantly to levels that exceed the applicable PM standards in the Fort Hall PM–10 nonattainment area, EPA will determine whether additional controls on FMC and any other major stationary sources of PM–10 precursors within the nonattainment area are necessary or appropriate, to the extent the Shoshone-Bannock Tribes have not submitted a tribal implementation plan addressing such concerns. The State would be required to address any significant PM precursor emissions attributable to sources on State lands that contribute to levels that exceed the applicable PM standards in the Fort Hall PM–10 nonattainment area.

3. Evidence of Adverse Health Effects Attributable to Poor Air Quality

As demonstrated above, the Fort Hall PM–10 nonattainment area violates the pre-existing 24-hour PM–10 standard and may also violate the pre-existing annual PM–10 standard and the revised 24-hour and annual PM–10 standards. A recent report prepared by the U.S. Department of Health and Human Services, Public Health Service, Agency for Toxic Substances and Disease Registry (ATSDR), appears to be consistent with the growing body of epidemiologic evidence showing an association between particulate pollution and respiratory illnesses. The

report looked at the Native American population living on the Fort Hall Indian Reservation and the Native American population living on the Duck Valley Indian Reservation. The Duck Valley Indian Reservation is located in an undeveloped area in northern Nevada and has no known air quality problem. A total of 515 individuals (229 from Fort Hall and 286 from Duck Valley) participated in this study. The study compared pulmonary function, levels of cadmium, chromium, fluoride, and several renal biomarkers in urine specimens, and results from a questionnaire filled out by the participants concerning respiratory symptoms or diseases.

The report reveals a significantly higher incidence of self-reported respiratory symptoms or diseases among the residents living on the Fort Hall Indian Reservation as compared with those living on the Duck Valley Indian Reservation. For example, the incidence of chronic bronchitis was three times higher and the incidence of pneumonia was two times higher for the population living on the Fort Hall Indian Reservation. Differences in respiratory outcomes at the two reservations were greatest when comparing the health of participants younger than 20 years of age. A copy of this report is in the docket. Although this report does not prove that the reported adverse health effects among the Shoshone-Bannock Tribes are caused by the PM–10 nonattainment problem in the Fort Hall PM–10 nonattainment area, the report does support EPA's concern with the air quality in the area.

III. FIP Proposal

As discussed above, in this proposed rulemaking, EPA is exercising its discretionary authority under sections 301(a) and 301(d)(4) of the CAA and 40 CFR 49.11(a) to promulgate such FIP provisions as are necessary or appropriate to protect air quality within the Fort Hall PM–10 nonattainment area. Based on information available to EPA, EPA believes that the primary, if not sole, cause of continued violations of the pre-existing 24-hour PM–10 NAAQS that have been recorded on the Tribal monitors are PM–10 emissions from the FMC facility that emanate from within the Fort Hall PM–10 nonattainment area. In this FIP proposal, EPA is proposing controls for the FMC facility that EPA believes represent RACT.

A. Emission Inventory

Section 172(C)(3) of the CAA and 40 CFR 51.114 require that a PM–10 nonattainment plan include a comprehensive, accurate, and current inventory of actual emissions from all sources of the relevant pollutant in the relevant area. An emission inventory is used to identify sources that contribute to measured violations of the NAAQS and to estimate the rate at which these sources emit pollutants into the atmosphere. The source emission data that comprise an emission inventory are used in evaluating the effectiveness of alternative control technology and the emissions that result from implementation of controls. Emission data are also used to predict air quality benefits from implementation of selected control technologies.

An emission inventory is generally prepared to reflect estimates of actual emissions. Actual emissions are estimates of what a source actually emitted into the atmosphere within a specified time frame, usually on an annual or 24-hour basis, and are used to assess emission conditions that could have led to specific measured air quality. Actual annual emissions are the emissions emitted into the air during the calendar year and are expressed in tons/year. The 24-hour actual emission rates can be expressed in several different ways: average daily emission rates; worst case emission rates for any 24-hour period for each source; or a worst case emission rate for each source during a specified season.

In the early 1990s, EPA, the State and, the Tribes worked together on the technical products that would serve as the basis for the PM–10 planning for the Power-Bannock Counties PM–10 nonattainment area. An emission inventory of all stationary sources and area sources in the nonattainment area was one of these technical products. For this FIP proposal, EPA started with the emission inventory for the former Power-Bannock County PM–10 nonattainment area that was developed jointly by EPA, the State, and the Tribes, which contained inventories of actual annual emission rates, average daily emission rates, worst case emission rates for a 24-hour period, and worst case emission rates during the winter, when exceedences are most likely to occur in the area. Two types of changes to the emission inventory have been made along the way. First, although the emission inventory uses a base year of 1993, it has been revised to reflect 1996 emissions for FMC. EPA believes that the 1996 emission inventory more accurately represents current operations at FMC than any previous emission inventory prepared for the facility. For example, the 1996 emission inventory for FMC reflects additional engineering evaluation of furnace gas composition, as well as the change in the ore used by FMC, which has an effect on PM–10 emissions throughout the facility. Second, EPA has used emissions only from the stationary sources and area sources in what is now known as the Fort Hall PM–10 nonattainment area. With respect to area sources, this meant apportioning area source emissions between the Fort Hall PM–10 nonattainment area and the Portneuf Valley PM–10 nonattainment area.

Table 3 below summarizes the 1993 actual annual emissions for the Fort Hall PM–10 nonattainment area (1996 base year for FMC). Point source and area source emissions of less than one ton per year are excluded from the table. EPA used the emission inventory for the Fort Hall PM–10 nonattainment area, in conjunction with ambient air quality and meteorological data and analysis, in reaching its determination that the continued violations of the pre-existing 24-hour PM–10 standard that have been recorded on the Tribal monitors are primarily, if not exclusively, attributable to PM–10 emissions emanating from the FMC facility within the Fort Hall PM–10 nonattainment area. In this FIP proposal, EPA estimated emission reduction targets at FMC from the estimated design value using the worst case daily emission rates at FMC. EPA believes it is appropriate to develop a control strategy assuming the potential of both adverse meteorology and worst case daily emissions occurring simultaneously in order to ensure that PM levels in the Fort Hall PM–10 nonattainment area do not endanger public health. Table 4 below summarizes the 1996 actual daily worst case emissions for FMC. EPA has used this more refined emission inventory of the individual sources of PM–10 at the FMC facility to identify the largest emission sources at the FMC facility that appear to be contributing to high PM–10 concentrations in the area.

TABLE 3.—1993 ACTUAL PM–10 EMISSIONS SUMMARY, FORT HALL PM–10 NONATTAINMENT AREA (GREATER THAN 1 TON/YEAR)

Source name	PM–10 emissions (tons/year)
Point Sources:	
FMC Corporation (1996)	727
J.K. Merrill #43 (main)	7
McNabb Grain	2
General Mills, Schiller	1
Subtotal	737
Area Sources:	
Resident/Commer. Const	31
Residential Heating	0

TABLE 3.—1993 ACTUAL PM–10 EMISSIONS SUMMARY, FORT HALL PM–10 NONATTAINMENT AREA (GREATER THAN 1 TON/YEAR)—Continued

Source name	PM–10 emissions (tons/year)
Prescribed Burning	35
Wild Fires	49
Road Construction	12
Aircraft Emissions	1
Agricultural Equipment	1

TABLE 3.—1993 ACTUAL PM–10 EMISSIONS SUMMARY, FORT HALL PM–10 NONATTAINMENT AREA (GREATER THAN 1 TON/YEAR)—Continued

Source name	PM–10 emissions (tons/year)
Agricultural Windblown Dust	310
Locomotive Emissions	0
Brake Wear	0
Tire Wear	0
Unpaved Roads	571

TABLE 3.—1993 ACTUAL PM–10 EMISSIONS SUMMARY, FORT HALL PM–10 NONATTAINMENT AREA (GREATER THAN 1 TON/YEAR)—Continued

Source name	PM–10 emissions (tons/year)
Paved Roads	59
Mobile Exhaust	0
Subtotal	1069

TABLE 4.—FMC 1996 ACTUAL WORST CASE DAILY AND ANNUAL PM–10 EMISSIONS SUMMARY

Source name	PM–10 emissions (lb/day)	PM–10 emissions (ton/yr)
POINT SOURCES:		
Ground Flare	2281	197
Calciners	1204	100
Elevated Secondary CO Flare	828	62
All other Baghouses	446	49
Medusa Anderson (four furnaces)	269	43
Calciner Cooler Vents	188	27
Pressure Relief Vents	99	1
Cooling Tower	96	18
Phos Dock	34	6
Boilers	13	2
Emergency CO Flares	12	0
Subtotal Point Sources	5470	505
PROCESS and OTHER FUGITIVES:		
Slag Handling:		
Slag tap	173	28
Metal Tap	88	14
Slag cooling	209	33
Slag digging	*173	*27
Loader to truck	**270	**43
Truck to slag pile	132	20
All Roads	190	25
All Piles	163	23
Dry fines material recycle	33	6
Nodule fines handling truck loading	12	2
Nodule fines stockpiling	7	1
Subtotal Fugitives	1450	222
Grand Total	6920	727

*Slag handling.
**Subtotal 1045.

As can be seen from Table 3, FMC accounts for more than 98% of PM–10 emissions from all stationary sources and more than 40% of PM–10 emissions from all sources of PM–10 in the Fort Hall PM–10 nonattainment area. Because of the size of FMC's PM–10 emissions, both in absolute terms and in comparison to other sources of PM–10 emissions in the Fort Hall PM–10 nonattainment area, EPA has invested many years and hundred of thousands of dollars in developing an accurate and comprehensive inventory of emissions from the FMC facility. Changes in the emission estimates for the FMC facility have resulted from changes in FMC processes over time, better identification of emission sources at the facility, and better understanding of emissions from known sources through source testing or further engineering analysis of known processes. Process fugitive emissions account for a significant portion of the emissions at FMC. There are approximately 450 individual fugitive emission points listed in the inventory. Because fugitive emissions do not emanate from a single point, they are difficult to measure and are determined based on assumptions and judgement. In addition, for some of the point sources at FMC, emissions cannot be measured through source tests because of the combustible nature of the gas stream, but are instead estimated based on theoretical chemical reactions and engineering calculations.

The emission inventory for FMC has undergone almost continual revision and updating since the early 1990s. As described in more detail below, EPA initially planned on using dispersion modeling to identify specific sources subject to control and to demonstrate the effectiveness of the proposed control strategy. During this time, FMC continued to provide EPA with new information that made the inventory more complex and more detailed, but also tended to lower emission estimates.

After the dispersion modeling failed to adequately perform at the Tribal monitoring sites, and EPA decided in the summer of 1997 to demonstrate the effectiveness of the proposed control strategy by rolling back overall facility emissions based on the design value, FMC came forward in December 1997 with information identifying new emission sources with significant emissions and significantly higher emission estimates for previously identified sources. This new information effectively quadrupled the daily facility-wide emission rates. EPA evaluated this new information and revised the emission inventory, where appropriate, to reflect this new information. Although EPA has, for the most part, used the emission estimates provided by FMC, EPA has in some instances revised FMC's estimates to provide a more realistic estimate of worst case daily emissions. Please refer to the docket and TSD for a more detailed discussion of the emission inventory.

B. Determining RACM/RACT

The General Preamble describes the methodology for determining RACM/RACT in detail. 57 FR 13498, 13540–13541. In summary, EPA suggests starting to define RACM with the list of available control measures for fugitive dust, residential wood combustion, and prescribed burning contained in Appendices C1, C2, and C3 of the General Preamble and adding to this list any additional control measures proposed and documented in public comments. Any measures that apply to emission sources of PM–10 that are insignificant (*i.e.*, de minimis) and any measures that are unreasonable for technology reasons or because of the cost of the control in the area can then be culled from the list. In addition, potential RACM may be culled from the list if a measure cannot be implemented on a schedule that would advance the date for attainment in the area. 57 FR 13498, 13540–41, 13560.

The General Preamble also provides guidance for states in determining RACT for moderate PM–10 nonattainment areas for SIP planning purposes. *See* 57 FR 13540–41 and Appendix C4 (57 FR 18070, 18073–74 (April 28, 1992)). EPA recommends to states that major stationary sources of PM–10 be the starting point for RACT analysis. 57 FR 13541. EPA has defined RACT for PM–10 planning purposes as the lowest emission rate that a particular source is capable of meeting by application of control technology that is reasonably available considering technological and economic feasibility. RACT applies to existing sources of PM–10 stack, process fugitive, and fugitive dust emissions (e.g., haul roads and unpaved staging areas). See section 172(c)(1) of the Act and 57 FR 13541. RACT for a particular source is determined on a case-by-case basis considering the technological and economic feasibility of reducing emissions from that source through process changes or add-on control technology.

The technological feasibility of applying an emission reduction method to a particular source should consider the source's process and operating procedures, raw materials, physical plant layout, and any other environmental impacts such as water pollution, waste disposal, and energy requirements. The process, operating procedures, and raw materials used by a source can affect the feasibility of implementing process changes that reduce emissions and the selection of add-on control equipment. An otherwise available control technology may not be reasonable if reducing air emissions has an adverse effect on other resources and these adverse environmental impacts cannot reasonably be mitigated. 57 FR 13540–41 and 57 FR 18073–74.

Economic feasibility considers the cost of reducing emissions and the difference in these costs between the particular source and other similar sources that have implemented emission reductions. EPA presumes that it is reasonable for similar sources to bear similar costs of emission reductions. Economic feasibility rests very little on the ability of a particular source to ''afford'' to reduce emissions to the level of similar sources. Less efficient sources would be rewarded by having to bear lower emission reduction costs if affordability were given high consideration. Rather, economic feasibility for RACT purposes is largely determined by evidence that other sources in a source category have in fact applied the control technology in question. The capital costs, annualized costs, and cost effectiveness of an emission reduction technology should be considered in determining its economic feasibility. The OAQPS Control Costs Manual, Fourth Edition, EPA–450/3–90–006, January 1990, describes procedures for determining these costs. The above costs should be considered for all technologically feasible emission reduction options. 57 FR 13540–41 and 57 FR 18073–74.

The attainment needs of the area should also be considered in determining RACT. Where a source contributes insignificantly to ambient concentrations that exceed the NAAQS, it would be unreasonable, and therefore would not constitute RACT, to require additional controls on the source. 57 FR 13540–13541 and fn. 18 and 20.

C. RACM/RACT Determination for Minor Stationary Sources and Area Sources

EPA evaluated the extent to which emissions from various sources throughout the Fort Hall PM–10 nonattainment area affected attainment of the pre-existing PM–10 NAAQS as a guide to determining whether controls for those different sources is RACT. At the conclusion of that evaluation, EPA believes that emissions emanating from the FMC facility located within the Fort Hall PM–10 nonattainment area are the primary, if not sole, cause of the continued violations of the pre-existing 24-hour PM–10 NAAQS within the nonattainment area. Therefore, EPA's determination at this time is that imposing controls on PM–10 emissions from other stationary sources and area sources in the Fort Hall PM–10 nonattainment area is not necessary to protect air quality during the transition period and would not expedite attainment of the revised PM–10 NAAQS.

In this case, EPA was not able to determine on the basis of available modeling the precise contribution of other area and minor stationary sources in the Fort Hall PM–10 nonattainment area to the locations of expected 24-hour and annual PM–10 violations within the Fort Hall PM–10 nonattainment area. Despite repeated efforts, with the assistance of the Tribes, IDEQ, and affected industry, the air quality models initially selected and approved by EPA for use in the Power-Bannock Counties PM–10 nonattainment area have continued to fail well-established performance criteria in the vicinity of the FMC facility, precisely the area where monitored violations of the pre-existing 24-hour PM–10 standard continue to occur. As discussed in more detail below in section III.I., EPA has therefore relied on simple linear proportionality between facility-wide emissions at FMC and ambient PM–10 concentrations measured at the Tribal monitors to establish that the proposed control strategy is expected to result in attainment of the PM–10 standard. The use of simple roll back assumes that each source in the area has a contribution at the monitor based only on emission rates rather than source location and emissions characteristics. The use of simple roll back in the nonattainment area therefore does not allow EPA to determine the contribution

of a particular area or minor stationary source to the locations of expected 24-hour and annual PM–10 violations.

Other information, however, strongly suggests that PM–10 emissions from FMC are responsible for the high PM–10 values that have been recorded on the Tribal monitors. A simple comparison of the data among the three Tribal monitors on days when the primary site and Sho-Ban site documented exceedences of the standard strongly suggests that contributions from sources other than FMC are insignificant. Data from the background site, which is upwind from FMC based on prevailing wind directions, reveals that the background site rarely exceeded 50 ug/m3 and generally recorded values less than 10 ug/m3 on days when the primary site and Sho-Ban site, both downwind of the FMC facility, recorded values in excess of 150 ug/m3. See Table 2.

EPA has also analyzed the PM–10 readings on the primary and Sho-Ban monitors and the wind direction observed during the sampling time frame on a more detailed level. EPA compared the 24-hour average wind direction with the PM–10 concentrations recorded at these monitors for the period between October 6, 1996, and December 31, 1997. In other words, PM–10 concentrations are presented as a function of 24-hour wind direction. Based on this data, it is evident that exceedences of the PM–10 24-hour NAAQS are recorded on the primary and Sho-Ban monitors only when the wind is blowing from the FMC calciner and furnace building areas—two of the largest sources of PM–10 at FMC—toward the monitors. No exceedences of the PM–10 standard have been recorded on these monitors when the wind is blowing from any other direction, including from the part of the FMC facility located on State lands and from Simplot, the other potential source of PM–10 emissions containing phosphorous and which is located on State lands. EPA and the Tribes have been conducting additional air sampling and analysis at the primary and Sho-Ban monitoring sites. Filter samples from these sites are being analyzed for chemical and physical composition to determine the types of sources contributing to the high PM–10 levels. Preliminary information from this work indicates that emissions from high temperature or combustion sources from FMC are significant contributors to the PM–10 observed on the filters and that the fine particles (PM–2.5 or less) are the major component of the PM–10. In addition, wind directional chemical analysis resulted in high levels of phosphorus ore components in the fine particles when the wind is blowing from the direction of the FMC calciners and furnace.[10]

Based on this information, the fact that PM–10 emissions from FMC are the single largest source of PM–10 emissions in the Fort Hall PM–10 nonattainment area, and the other factors discussed below in this section III.C., EPA's determination at this time is that FMC is the primary, if not the sole, contributor to PM–10 levels that exceed the pre-existing standard in the nonattainment area. EPA expects to complete the analytical and receptor-modeling study by summer of 1999. The initial results suggest the study will confirm that the sources targeted in this proposal are indeed contributing to the problem at the level the emissions inventory would indicate.

1. Stationary Sources

The FMC facility is the only major stationary source of PM–10 within the Fort Hall PM–10 nonattainment area and within the entire Reservation and it emits more than 727 tons of PM–10 each year (actual emissions). There are currently five other minor stationary sources of PM–10 operating in the Fort Hall PM–10 nonattainment area, with emissions ranging from .01 to 6.8 tons per year. These minor stationary sources consist of two grain loading and storage facilities, a fertilizer handling operation, a pipeline pump station with an associated boiler, and an aggregate handling facility. PM–10 emissions from all stationary sources in the Fort Hall PM–10 nonattainment area are estimated at 737 tons per year. FMC emits 727 tons per year of this amount, or more than 98% of all emissions from stationary sources.

EPA has recommended to states in the SIP planning process that major stationary sources of PM–10 be the minimum starting point for RACT analysis. 57 FR 13541. EPA recommends that states go on to conduct a RACT analysis of minor stationary sources and require control technology for other stationary sources in the area that are reasonable to control in light of the area's attainment needs and the feasibility of such controls. *Id*. In light of the fact that all stationary sources within the nonattainment area other than FMC emit less than two percent of all PM–10 emissions from stationary sources, and in light of the monitoring analysis indicating that exceedences of the standard occur only when the wind is blowing from FMC's facility toward the Tribal monitors, EPA's determination at this time is that minor stationary sources within the nonattainment area—considered individually as well as collectively—have an insignificant impact on exceedences of the PM–10 NAAQS in the area. Therefore, EPA's determination at this time is that additional controls on minor stationary sources in the nonattainment area are not needed for attainment and would not expedite attainment. RACT for such sources would thus consist of no additional controls because it would be unreasonable to impose additional controls on these minor stationary sources in light of the attainment needs of the area. *See* 57 FR 13541 & n. 20.

To ensure that these and any new minor stationary sources that may locate within the nonattainment area continue to have a de minimis effect on PM–10 levels in the area that exceed the standard, EPA believes it is appropriate for these and any new stationary sources to be subject to generally applicable restrictions on PM–10 emissions. EPA has been working with the Shoshone-Bannock Tribes on air quality regulations that address the pollutants for which EPA has established NAAQS, including PM–10, and that include a new source review program. EPA strongly encourages the Tribes to continue working toward the submission of a general air quality tribal implementation plan, including general rules for controlling PM–10 emissions from existing minor sources and a new source review program. Because these existing minor sources are relatively minor sources, EPA sees no urgency in going forward now with a minor new source review program and other general rules, but will instead await Tribal action for some reasonable period of time.

2. Area Sources

Area source emissions from within the Fort Hall PM–10 nonattainment area total approximately 1069 tons per year, or approximately 60%, of all PM–10 emissions within the Fort Hall PM–10 nonattainment area. The largest of the area source categories are paved and unpaved roads, agricultural wind blown dust, wild fires, and prescribed burning. Although area source emissions are slightly larger than the total emissions from FMC, area source emissions are spread over the entire 48.7 square miles of the Fort Hall PM–10 nonattainment

[10] Although both FMC and Simplot both utilize phosphate ore in their processes (FMC produces elemental phosphorus and Simplot produces chemical compounds (fertilizers) containing phosphorus), as discussed above, the exceedences of the PM–10 standard have been recorded on the Tribal monitors when the wind is blowing from the FMC facility toward the monitors.

area. As discussed below, the impact of area source emissions on air quality at any given location in the nonattainment area is therefore greatly reduced.

a. *Roads.* Emissions from paved and unpaved roads in the Fort Hall PM–10 nonattainment area are the second largest source of particulate emissions on the Reservation, second only to FMC. Emissions from paved roads in the nonattainment area are 59 tons per year, or nine percent of all road emissions within the nonattainment area, whereas emissions from unpaved roads in the nonattainment area are 571 tons per year, or 91% of all road emissions in the nonattainment area. Combined, paved and unpaved road emissions account for 59% of all area source emissions in the Fort Hall Nonattainment area.

Emissions from paved roads have been determined by the State to have a significant ambient impact in the Portneuf Valley PM–10 nonattainment area, particularly in the Pocatello urban area, because of the high density roadway network on State lands. Most of the paved and unpaved roads within the Fort Hall PM–10 nonattainment area, however, service the rural agricultural activities that are evenly distributed throughout the Reservation. Therefore, road dust emissions are distributed over the approximately 48.7 square miles of the Fort Hall PM–10 nonattainment area. Moreover, there are few roads within the nonattainment area that are upwind of the Tribal monitors. Because of the large area over which road dust emissions are spread in the nonattainment area and the location of the roads in relation to the Tribal monitors that have recorded violations of the 24-hour PM–10 standard, EPA believes that the ambient PM–10 impact of road emissions in the Fort Hall PM–10 nonattainment area is insignificant.

b. Wind Blown Agricultural Dust. Wind blown dust from agricultural operations is the second largest area source in the nonattainment area. Emissions from this source are estimated at 310 tons per year. These fugitive emissions result from tilling, harvesting, and exposure of tilled land to high winds. The impact of these emissions on the measured PM–10 levels at the Tribal monitors appears to be insignificant for several reasons. First, the agricultural land that is tilled and used for crops in the Fort Hall PM–10 nonattainment area is downwind of FMC and the Tribal monitors. The agricultural land upwind of the FMC facility is used primarily for cattle grazing and has vegetative cover which resists re-entrainment of windblown dust.

In addition, most of the agricultural land within the Fort Hall PM–10 nonattainment area is leased from the Shoshone-Bannock Tribes by private concerns. The Natural Resource Conservation Service in Bannock County (formerly the Soil Conservation Service) reports that most farming operations on the Reservation, like farming across the country, already utilize best management practices to control soil erosion (including wind erosion) in order to qualify for Federal subsidies under the Food Securities Act (*see The Effectiveness of the 1985 Food Securities Act's Highly Erodible Land Provisions to Reduce Agricultural Fugitive Dust Emissions,* EPA 171–R–92–015, PB–92–182401, July 1992). EPA has determined that, in general, these management practices represent RACM for agricultural sources. *See* 57 FR 13498.

Finally, as with road emissions, agricultural emissions are spread across a wide geographic area, and thus have a reduced ambient impact. EPA therefore believes, based on available information, that agricultural emissions have an insignificant impact on the violations that have been recorded in the nonattainment area.

c. Fires. Prescribed fires and wild fires in the Fort Hall PM–10 nonattainment area emit a combined total of approximately 84 tons of PM–10 emissions each year. Emissions from these activities are usually of high intensity with smoke plumes that rise quickly into the air because of the heat generated, are of short duration (on the order of hours), and seldom if ever re-occur at the same location. Based on the experience of other areas in the country where prescribed fires and wild fires are common (such as eastern Washington and the Idaho panhandle), recording a violation of the PM–10 NAAQS at a fixed location due to fire is rare. In addition, there have been no reports or evidence of wild or prescribed fires directly upwind of the Sho-Ban or primary monitors or directly upwind of the background monitor. In short, emissions from fires do not appear to have contributed to the violations of the PM–10 NAAQS recorded in the nonattainment area. For these reasons, EPA's determination at this time is that prescribed and wild fires have an insignificant impact on the continued violations of the pre-existing 24-hour PM–10 standard that have been recorded on the Tribal monitors.

D. Overview of FMC Operations

The FMC facility located on the Fort Hall Indian Reservation near Pocatello, Idaho, produces ''food grade'' elemental phosphorus from shale (or ore) mined in the general area. Elemental phosphorus is then shipped to other FMC processing facilities throughout the United States where it is converted into phosphates and phosphoric acid, which in turn are used in a wide variety of household products from dishwasher soap to additives to soft drinks. At the FMC facility near Pocatello, crushed phosphate ore is pressed into briquettes and heated (calcined) to remove organic matter. These calcined briquettes, now called nodules, are mixed with silica and dried coke (this mix is called burden) and fed to the four electric arc furnaces in a continuous operation. In a reducing atmosphere in the plasma of the electric arc furnace, elemental phosphorus is liberated as a gas.

Furnace gases are ducted to an electrostatic precipitator to clean the gas stream and then to condensers where the phosphorus is cooled, liquified, and collected for transport. Molten slag (calcium silicate), a waste product, is formed at the bottom of the furnace and must be periodically removed through a process called ''slag tapping''. Ferrophos, a metal byproduct, also forms in the bottom of the furnace below the slag layer and must also be periodically removed through a process called ''metal tapping''. Potential particulate emission points include handling of raw ore, nodules, slag, and burden. Particulates are also emitted during the calcining of briquettes, and from various furnace flares and vents.

For ease of reference, EPA has assigned a number to each of the known sources of PM–10 at FMC. The numbering system is consistent throughout this notice.

E. General Process for Determining RACT for FMC

1. In General

The process for determining RACT in states with moderate PM–10 nonattainment areas is discussed above in section III.B. above. Where, as here, EPA is exercising its discretionary authority under sections 301(a) and 301(d)(4) of the Act and 40 CFR 49.11(a) to promulgate a FIP for a moderate PM–10 nonattainment area in Indian country as necessary or appropriate to assure protection of healthy air quality, EPA believes it is appropriate for EPA to use this same RACT methodology in developing the control strategy.

EPA hired Environmental Quality Management, Inc. (EQM), a contractor with extensive knowledge of the phosphorus industry in general and experience with the FMC Pocatello facility in particular, to assist in the

development of a comprehensive and accurate particulate emission inventory for FMC. The emission inventory identified the point and fugitive sources of PM–10 at FMC, the emission rate for each source, and all existing control devices operating on each source.

EQM then conducted an evaluation of alternative control technologies for each source that could be used as the basis for a determination of RACT. For each source, EQM identified the existing control technology for the source and alternative control technologies [11] that could be more effective in reducing emissions than the existing control technology used at FMC. EQM then evaluated these alternative control technologies, including the incremental emission reductions and estimated cost of installing, operating, and maintaining these control technologies. EQM also determined the ''cost effectiveness'' ($/ton of PM–10 reductions) of the alternative control technologies.

Based on the EQM report, EPA considered whether each alternative control technology represented RACT, that is, whether the technology was both technologically and economically feasible in light of the attainment needs of the area. After selecting the control technology that represented RACT for each source, EPA developed enforceable emission limitations and work practice requirements that represent the lowest emission limitation the source is capable of achieving with the selected control technology.[12]

For five sources at FMC—slag handling and related processes (source 8), the calciner scrubbers (source 9), the furnace building (source 18c), fugitive and point source emissions from the phosphorous loading dock (source 21), and the elevated secondary condenser and ground flares (source 26a)—EPA believes that additional controls are both technologically and economically feasible and necessary in light of the attainment needs of the area. Collectively, slag handling, the calciner scrubbers, and the elevated secondary condenser and ground flares account for more than 77% of daily worst case PM–10 emissions from all sources at FMC. The control strategy proposed in this FIP is anticipated to result in a reduction of PM–10 emissions of 4756 pounds per day from these sources, a 69% facility-wide reduction of PM–10 emissions from current levels in the emission inventory. The phos dock and the furnace building will be reduced to the levels of emissions in the emission inventory. The RACT determination for these five sources is discussed in more detail below.

EPA believes that all remaining sources at FMC currently employ controls that represent RACT. For example, most of the point sources at FMC are controlled by baghouses or scrubbers. Baghouses and scrubbers are, in general, among the most effective control technologies available for controlling PM–10 emissions from point sources and therefore generally represent RACT. With respect to fugitive sources, the available alternative control technologies are, in general, very expensive, such as building an enclosure around the fugitive source. Many of the fugitive sources, individually, have low emissions, which results in a high cost effectiveness for the alternative control technologies. In addition, further PM–10 reductions from many of these smaller sources do not appear to be necessary in light of the attainment needs of the area and would not expedite attainment.

As discussed above, however, none of the sources at FMC are currently subject to federally-enforceable emission limitations or work practice requirements on PM–10 emissions. For those sources which EPA believes currently employ RACT-level controls, EPA is proposing emission limitations and work practice requirements designed to maintain PM–10 emissions from those sources at the current levels in the emission inventory. This is essential because, as discussed in more detail below, the proposed control strategy will result in attainment of the pre-existing 24-hour PM–10 standard only if PM–10 emissions from these other sources remain at the current levels in the emission inventory. Please refer to the TSD for a detailed analysis of the existing and alternative control technologies, an evaluation of the available alternatives, and emission limitations and work practice requirements that EPA believes represent the lowest emission limitation that each source is capable of achieving by the application of the RACT-level controls for each source that EPA believes currently employs RACT-level controls.

2. RCRA Consent Decree

On October 16, 1998, a consent decree between FMC and EPA was lodged in the United States District Court for the District of Idaho regarding alleged violations of the Resource Conservation and Recovery Act (RCRA) at the FMC facility. The public comment period on the RCRA consent decree closed on December 18, 1998. If, after reviewing the comments received, EPA and the Department of Justice determine that it is appropriate to proceed with entry of the RCRA consent decree, the Department will file a motion for entry of the decree.[13] Upon entry of the RCRA consent decree by the court, the RCRA consent decree will require FMC to pay a civil penalty of $11,864,800 for alleged RCRA violations and to bring the FMC facility into compliance with RCRA. In addition, as part of the settlement, FMC agreed to implement 13 ''supplemental environmental projects'' (referred to as SEPs) in order to reduce PM–10 emissions at the FMC facility. Altogether, these SEPs will require FMC to expend more than $64 million in capital costs to implement these PM–10 reduction projects.[14]

Five of the SEPs address PM–10 emissions from the five sources for which EPA believes additional RACT controls are necessary for attainment of the PM–10 NAAQS. For each of these five sources, as is discussed in more detail below, FMC has agreed to install and operate as SEPs the control technology EPA believes represents RACT. FMC's commitment to install and operate this control technology for five years is persuasive evidence that the identified control technology is both technologically and economically feasible. Because of FMC's agreement to implement the control technology for these sources as SEPs in the RCRA consent decree, EPA believes that the controls will be in place at least two years before the controls would have been in place without FMC's agreement to install the necessary controls as SEPs. The acceleration of the compliance date is discussed in more detail in section III.H. below.

FMC has also agreed to implement as SEPs eight other projects designed to

[11] The term ''control technologies'' as used here includes process changes that would result in a reduction of emissions.

[12] The Clean Air Act defines the term ''emission limitation'' as ''a requirement established by the state or the Administrator which limits the quantity, rate, or concentration of emissions of air pollution on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operational standard.'' CAA section 301(k).

[13] The Department of Justice reserves the right to withdraw or withhold its consent to entry of the proposed consent decree if the comments, view, and allegations concerning the consent decree disclose facts or considerations which indicate that the proposed decree is inappropriate. 50 CFR 50.7(b).

[14] FMC has also agreed to commit $1,650,000 to fund a study of the potential health effects on residents of the Fort Hall Indian Reservation that may have resulted from releases of hazardous substances at the FMC facility.

modernize and upgrade control systems at the FMC facility which will make it easier to keep existing control technology operating properly without upsets and breakdowns, thereby reducing PM–10 emissions at the FMC facility. For example, FMC has agreed to replace at least three existing baghouses with larger, more efficient baghouses and to spend more than $5.5 million for the upgrading or replacement of other existing baghouses. FMC has also agreed to upgrade and improve other PM–10 processes and controls. For these other projects, that is, other than the five projects for sources for which EPA believes additional controls are necessary to meet the RACT requirements, EPA believes that FMC can achieve the proposed emission limitations and work practice requirements even without the SEPs. The SEPs provide additional assurance, however, that FMC will be able to comply with the requirements of this proposed FIP. A copy of the RCRA consent decree is in the docket.

3. Mass Emission Limitations

EPA has proposed a mass emission limitation for most identified point sources. For sources for which EPA has determined that additional controls are not necessary for attainment of the PM–10 NAAQS, the proposed mass emission limitation is based on the daily maximum emission estimate for the source in the 1996 emission inventory. EPA believes that compliance with the proposed mass emission limitations will, except for the point sources discussed below, entail no new or additional control equipment and no or minor changes in practices, procedures, or processes.

As discussed in more detail in section III.F. below, for three point sources—the calciner scrubbers (source 9), the phos dock Andersen scrubber (source 21a), and the elevated secondary condenser and ground flares (source 26)—EPA believes that additional controls are technologically and economically feasible and needed for attainment of the PM–10 standard. For these sources, the proposed mass emission limitation is in general based on the daily maximum emission estimate for the source in the 1996 emission inventory, but this emission rate is then reduced by the estimated percentage reduction in emissions that is expected after application of the control technology identified as RACT-level controls.

EPA is not proposing mass emission limits for fugitive sources because, in general, there are no readily available test methods to determine compliance with mass emission limits for fugitive sources. Instead, EPA is proposing visible emission limitations for fugitive sources as an indication that emission capture and control equipment is designed and operating properly and that proper housekeeping and maintenance activities are being conducted to prevent the escape of fugitive emissions. EPA is also proposing work practice requirements for fugitive sources, which are discussed in more detail below.

4. Opacity Limits

EPA is proposing a specific opacity limit for all but one of the known point and fugitive sources at FMC. EPA is also proposing a limit of no visible emissions from any location at the FMC facility, except to the extent a specific opacity limit is established for an identified point or fugitive emission source, in order to ensure that sources inadvertently omitted from the emission inventory do not go unregulated.

The opacity limits proposed in this FIP are based on best engineering judgment, as explained in more detail below and in the technical support document. EPA is relying in part on surveys of visible emissions conducted at the FMC facility to verify conditions used in the determination of emissions estimates and to determine whether the sources could comply with the proposed opacity limits. At EPA's request, air quality inspectors from the Shoshone-Bannock Tribes, State of Idaho, and EPA, who are certified readers using EPA Method 9, conducted visible emissions observations of most of the point and fugitive emission sources at FMC in December 1995 and January 1996 (1995–1996 visible emissions survey) and again in October and November 1998 (1998 visible emissions survey). The surveys are collectively referred to as the ''visible emissions surveys''. In general, the inspectors documented no visible emissions during the period of observation and rarely documented visible emissions greater than five percent opacity. Several of the sources for which visible emissions greater than five percent were observed are among the five sources for which EPA believes additional controls are necessary or sources that EPA believes were not being properly maintained or operated at the time of the inspection. In addition to the visible emissions surveys, EPA has considered opacity limits that apply to similar sources.

In summary, EPA believes that the visible emissions surveys and review of other similar sources support EPA's conclusion that the proposed opacity limits are both technologically and economically feasible because FMC appears to be capable of meeting the limits on a daily basis.[15] The demonstration of the effectiveness of this proposed control strategy is premised on ensuring that, for those sources for which EPA does not believe additional controls are necessary, emissions from those sources remain at the current levels in the emission inventory. EPA therefore believes that the proposed opacity standards are also necessary because they are designed to keep PM–10 emissions at the current levels in the emission inventory.

a. Point Sources. Many of the point sources at FMC are currently controlled by baghouses and scrubbers. In general, EPA has proposed an opacity limit of seven percent for point sources (*i.e.*, stacks) controlled by baghouses and five percent for point sources controlled by scrubbers. Based on best engineering judgement and field experience, EPA believes that point sources controlled by baghouses or scrubbers should have zero visible emissions if the control equipment is properly designed, maintained, and operated. A limit of five percent or seven percent provides for an appropriate margin of error. EPA is proposing Method 9 (40 CFR part 60, appendix A) as the reference test method. The 1995–1996 and 1998 visible emissions surveys confirm that the baghouses and scrubbers at FMC, when operating properly, had no visible emissions.

EPA is proposing a seven percent opacity limit for point sources controlled by baghouses at FMC. All of these sources involve processes and raw materials similar to processes and raw materials used by facilities subject to New Source Performance Standard (NSPS) subpart 000. *See* 40 CFR part 60, subpart 000. This standard applies to nonmetallic mineral processing plants processing crushed and broken stone, including shale, sand and gravel, and other similar materials. 40 CFR 60.670 and 60.671. Under this standard, stack emissions are subject to an opacity limit of seven percent unless the emissions are controlled by a wet scrubber. 40 CFR 60.672(a)(2). EPA believes that the point sources controlled by baghouses at FMC that capture emissions from shale, briquette, and nodule handling are sufficiently similar to the processes subject to the seven percent opacity limit of NSPS subpart 000 as to provide a basis for proposing a seven percent limit for the following point sources:

[15] The results of the visible emissions surveys are discussed in more detail in the in-depth RACT discussion of the sources for which EPA believes additional controls are necessary and, for all other sources, in the TSD in the docket.

east shale baghouse (source 5a); middle shale baghouse (source 6a); west shale baghouse (source 7a); north nodule discharge baghouse (source 12a); south nodule discharge baghouse (source 12b); east nodule baghouse (source 15a); west nodule baghouse (source 15b); nodule reclaim baghouse (source 16a); dust silo baghouse (source 17a); the east and west baghouses in the furnace building (sources 18a and 18b); and the coke handling baghouse (source 20a).

For point sources at FMC controlled by scrubbers, EPA is proposing an opacity limit of five percent. As stated above, EPA believes that point sources controlled by scrubbers should have zero opacity if they are being properly operated and maintained. A five percent opacity limit is commonly seen for point sources controlled by scrubbers. EPA proposes the five percent opacity limit for the following sources controlled by scrubbers: phos dock Andersen scrubber (source 21a) and excess CO burner (source 26b). Although the calciners are also controlled by scrubbers, EPA is proposing that the calciners be exempt from an opacity limit, as discussed in more detail in section III.F.2.c. below.

EPA is also proposing a five percent opacity limit for the boilers (source 23). Because the boilers are fired on natural gas, EPA believes that the boilers should have zero visible emissions if they are properly designed, maintained, and operated.

EPA has proposed an opacity limit of no visible emissions for the pressure relief vents (source 24) except during a ''pressure release,'' as defined in the proposed FIP. The pressure release vents at FMC are a safety device for the furnace system to prevent excessive pressure and potential explosion in the furnaces. They are designed to open and release excess furnace gasses directly to the atmosphere under certain conditions so as to reduce the potential for explosions.

EPA believes that the pressure release vents, when not venting furnace gasses (*i.e.*, when not experiencing a pressure release), should have no visible emissions if properly maintained and operated. EPA therefore is proposing a prohibition on visible emissions except during a pressure release. To ensure that the pressure release vents are not used as regular uncontrolled emission points and to ensure they are properly maintained and operated, EPA is proposing several work practice and monitoring requirements for the pressure release vents, which are discussed in more detail in section III.E.5. below.

The furnace CO emergency flares (source 25) are also a safety feature. When the furnace is shut down, due to an emergency, scheduled power outage, or scheduled maintenance, it is necessary to flare the furnace gases directly to the atmosphere until they can be safely routed to the furnace scrubbing system. Like the pressure release vents, when not venting furnace gasses, the furnace CO emergency flares should have no visible emissions if properly maintained and operated. EPA therefore is proposing a prohibition on visible emissions during normal operating conditions. To account for the need to vent furnace gases directly to the atmosphere under certain conditions, EPA proposes that this limit not apply during an ''emergency''. To ensure that venting of the CO emergency flares is minimized, EPA is proposing definitions for an emergency, along with recordkeeping and reporting requirements, which are discussed in more detail below in section III.G.

The proposed opacity limitations for the point sources for which EPA believes additional controls are necessary for attainment are discussed in section III.F. below.

b. Fugitive Emission Sources. EPA is proposing a limit of no visible emissions from most storage piles that consist of materials with a high moisture content. For example, the main shale pile (source 2) and the emergency/contingency raw ore shale pile (source 3) are comprised of material with a very high moisture content from which no visible emissions should be expected. EPA has also proposed a limit of no visible emissions from rail car unloading (source 1) and the stacker and reclaimer (source 4), again, because the raw ore as received from the mine has a very high moisture content.

EPA is also proposing a limit of no visible fugitive emissions from all buildings, with the exception of the furnace building, which is discussed in more detail in section III.F.5. below. NSPS subpart 000, which applies to facilities using similar processes and raw materials as those used at FMC, imposes a limit of no visible fugitive emissions from any building enclosing any process subject to NSPS subpart 000, except through a vent, which is a point source subject to the seven percent opacity limit under NSPS subpart 000. *See* 40 CFR 60.672(e). In general, buildings should be sealed and sources contained within them under a negative pressure created by the dust control systems for the sources located therein.

EPA is also proposing an opacity limit of no visible fugitive emissions from the dust silo and the pneumatic dust transport system (source 17b). Dust collected in the various baghouses at FMC is pneumatically transported from each baghouse to the dust silo via a pneumatic transport system. The dust silo and pneumatic transport system are enclosed systems and, when properly operated and maintained, should have no leaks to the atmosphere. Leaks in ducts can occur due to abrasion, wear and tear, and poor maintenance. These conditions represent poor operations and maintenance and can be prevented. Any visible emission is indicative of a leak that needs repair.

EPA is proposing an opacity limit of ten percent for all other fugitive sources identified in Table A. The ten percent limit applies to uncaptured fugitive emissions and process fugitive emissions from sources controlled by scrubbers and baghouses, including fugitive emissions that are not in fact captured by the control device. A properly designed and operating hood and capture system should be able to capture almost all particulate and ensure no visible emissions. A ten percent opacity will allow for rare situations when conditions overwhelm the emission capture system. NSPS subpart 000 establishes a ten percent opacity limit on most fugitive emissions. See 40 CFR 60.672(b).

The proposed ten percent opacity limit also applies to the nodule pile (source 11), the nodule fines pile (source 13), and the screened shale fines pile (source 14) which contain material a portion of which consists of fine dust materials and is subject to entrainment by wind during the addition of material to the piles. These piles are therefore are more likely to experience periods of visible fugitive emissions. For similar reasons, EPA proposes that roads be subject to an opacity limit of ten percent.

The proposed opacity limitations for the fugitive sources for which EPA believes additional controls are necessary for attainment—slag handling and related processes (source 8), the furnace building (source 18c), and phos dock fugitives (source 21b)—are discussed in section III.F. below.

5. Work Practice Requirements

EPA is proposing a general requirement that FMC maintain and operate each source, including all associated pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions. This requirement is based on a general provision in the New Source Performance Standards (NSPS), 40 CFR 60.11(d). Many States

have comparable provisions in their SIPs or include such a provision in new source construction permits. *See* Washington Administrative Code (WAC) 173–405–040(10); WAC 173–410–040(4); WAC 173–415–030(6)). EPA believes that control equipment and processes should at all times be operated in a manner consistent with good air pollution control practice for minimizing emissions. Determinations of whether acceptable operating and maintenance procedures are being used will be based on all information available to EPA, including, but not limited to, monitoring results, opacity observations, review of operating and maintenance procedures and inspections.

EPA is also proposing a moisture content and latex application requirement for the main shale pile (source 2) and the emergency/contingency raw ore shale pile (source 3). This requirement is designed to ensure PM–10 emissions from these sources remain at current levels. In addition, according to FMC, FMC already applies latex to these piles to reduce fugitive emissions.

As discussed above, the pressure relief vents (source 24) are not subject to an opacity limit during a pressure release. Because EPA is proposing that the opacity limit does not apply to the pressure relief vents during a ''pressure release'', it is essential to know the frequency and duration of a pressure release in order to implement the proposed opacity standard. In addition, in order to minimize PM–10 emissions from this source, it is essential that the duration and frequency of pressure releases are minimized to the extent possible. EPA therefore proposes to require FMC to install continuous temperature indicators and recorders to detect when a pressure release from a furnace begins and ends on each of the pressure release vents. The installation of temperature indicators and recorders on each pressure relief vent should detect all pressure releases and indicate their duration because the expected temperature during a pressure release should be significantly above ambient temperatures. Similar monitoring devices are being used to monitor the venting of uncontrolled emissions of noncondensible gases from pressure relief devices on digesters at pulp mills in Washington State.

EPA proposes to require that FMC submit a proposed parameter range of operation for the pressure relief vents that would indicate when a pressure release is occurring. The parameters would be approved through the title V permit issuance process or as a modification to FMC's title V permit. Until that time, the parameter range proposed by FMC for the pressure relief vent devices would serve to define when a ''pressure release'' is occurring.

After a pressure release, the seal must be re-established. Poor maintenance of the pressure relief vents and valves can lead to a delay in re-establishing the seal, which can result in excessive visible emissions. EPA has proposed as a work practice standard and monitoring requirement that FMC be required to conduct a visible emissions observation of each pressure relief vent after the seal has been re-established or otherwise sealed after each pressure release. The requirement to ensure that a pressure relief vent is properly resealed after a release is well established in the various leak monitoring rules in the NSPS and the National Emission Standards for Hazardous Air Pollutants (NESHAPS). *See, e.g.,* 40 CFR 60.482–4 (requiring that pressure relief devices be returned to state of no detectable emissions); 40 CFR 61.648 (same).

Finally, because the pressure relief vents at FMC are designed to release at 18 inches of water, EPA also proposes to require that FMC maintain the release point on each pressure relief vent at a minimum of 18 inches of water and to inspect each pressure relief valve after the seal has been re-established or otherwise sealed after each pressure release to ensure 18 inches of water is maintained. This will ensure that the pressure required to cause a release to the atmosphere is not reduced below the 18 inches of water setting, thereby preventing unnecessary releases to the atmosphere.

The 1995–1996 visible emissions survey did document several occasions when the pressure relief vents were emitting visible emissions. In one case the pressure relief valve was open and furnace gasses were being emitted. In a second case emissions were occurring even though the pressure relief valve was sealed. In accordance with the RCRA consent decree, FMC has replaced the existing pressure relief valves with an improved design that will quickly re-establish the seal. EPA believes that the new pressure relief valves should be able to comply with a requirement of no visible emissions from the pressure relief vents.

Additional work practice requirements are discussed in conjunction with the discussion of monitoring in section III.G. below.

6. Reference Test Methods

EPA has promulgated Methods 201/201A and 202 (40 CFR part 51, appendix M, ''Recommended Test Methods for State Implementation Plans'') as the reference test methods for mass PM–10 emission limitations for point sources and recommends that states use these reference test methods for PM–10 emission limitations in SIPs. Method 201 or its alternative, 201A, are used to measure primary PM–10 at stack conditions. Method 202 is used to measure matter that will condense to PM–10 at ambient temperatures but which is a gas at stack conditions.

In general, EPA proposes that both Methods 201 or 201A and Method 202 be required as the general reference test methods for the proposed mass emission limitations for point sources at FMC. EPA has proposed several exceptions to this requirement. First, FMC must use Method 5 (40 CFR part 60, appendix A) in place of Method 201 or 201A for the calciners (source 9) and any other sources with entrained water drops. In such case, all the particulate matter measured by Method 5 must be counted as PM–10 because Method 5 is a test method for determining total suspended particulate from a stationary source, not just PM–10. Second, FMC may use Method 5 as an alternative to Method 201 or 201A for a particular point source. Again, if Method 5 is used, all of the particulate measured by Method 5 must be counted as PM–10. Finally, FMC is not required to use Method 202 for a particular point source if FMC submits a written request to the Regional Administrator which demonstrates that the contribution of condensible particulate matter to total PM–10 emissions is insignificant for such point source and the Regional Administrator approves the request in writing.

For opacity standards, EPA is proposing EPA Method 9 (40 CFR part 60, appendix A) as the reference test method for opacity standards with numerical limits for both point sources and fugitive sources, with an averaging period of six minutes and an observation interval of 15 seconds.

For those sources at FMC for which EPA is proposing a limit of no visible emissions, EPA is proposing a ''visual observation'' as the reference test method. The standard of no visible emissions means that at no time during the observation period shall the source emit any visible emissions. A ''visual observation'' is defined to mean that no visible emissions are detected during 10 minutes of continuous viewing conducted in accordance with section 5 of EPA Method 22 (40 CFR part 60, appendix A) by a person who meets the training guidelines described in section 1 of Method 22.

The proposed FIP clarifies that the specification of a reference test method does not preclude the use of other credible evidence for the purpose of submitting compliance certifications or establishing whether or not FMC is in compliance with a particular requirement. This is consistent with recent amendments to the requirements for SIPs, 40 CFR 51.212(c) and 52.12(c), and recent amendments to the NSPS and NESHAPs, 40 CFR 60.11(g) and 61.12(e). *See* 62 FR 8314 (February 24, 1997).

7. Startup, Shutdown, Scheduled Maintenance, Upsets, Breakdowns, Malfunctions, and Emergencies

EPA has carefully considered whether to provide an affirmative defense to a penalty action for violation of the proposed emission limitations occurring during periods of startup, shutdown, scheduled maintenance, upset, breakdown, malfunction, or emergency. Because the emission limitations proposed in this FIP are designed to attain and maintain the applicable health-based PM NAAQS, any affirmative defense to a penalty for exceeding the standards proposed in this notice must not interfere with EPA's responsibility for assuring such attainment and maintenance.

After careful consideration of the issue, EPA is proposing two alternative approaches with respect to violations attributable to such events. Under the first approach, the proposed emission limitations would apply at all times and there would be no affirmative defense for excess emissions caused by such events. If emissions exceeded the proposed standards during startup, shutdown, scheduled maintenance, a malfunction, or an emergency, EPA would, of course, retain its enforcement discretion to forgo seeking a civil penalty for violation of the standard. For example, EPA could determine not to pursue a penalty action because excess emissions occurred during a particular sudden and unavoidable breakdown of process or control equipment beyond FMC's control, such event could not have been prevented through better planning, design, operation, or maintenance, and FMC made repairs in an expeditious fashion and took steps to minimize the excess emissions to the extent practicable.

Under the second approach, EPA would provide an affirmative defense to a penalty action (but not to an action for injunctive relief) provided certain conditions are satisfied. Under this second approach, EPA is proposing somewhat different conditions that must be satisfied for startup, shutdown, and scheduled maintenance, on the one hand, and upsets, breakdowns, malfunctions, and emergencies (collectively referred to here as ''malfunctions or emergencies''), on the other hand. Startup, shutdown, and scheduled maintenance [16] are generally foreseen or planned events and should be accounted for in the planning, design, and implementation of operating procedures for the process and control equipment. In contrast, malfunctions and emergencies are, by definition, unplanned or unforseen events.

Under this second approach, for FMC to obtain relief from penalty for violations resulting from startup, shutdown, or scheduled maintenance, FMC would be required to notify EPA of any startup, shutdown, or scheduled maintenance event expected to cause emissions in excess of the generally applicable standards prior to the occurrence of such event. FMC would also be required to establish, through properly signed, contemporaneous operating logs or other relevant evidence, that the excess emissions could not have been avoided through careful and prudent planning, design, and operations and maintenance practices; that the emission unit in question and any related control equipment and processes were at all times maintained and operated in a manner consistent with good practice for minimizing emissions; that the amount and duration of the excess emissions were minimized to the maximum extent practicable; and that all reasonable steps were taken to minimize the impact of the excess emissions on the ambient air. FMC would also be required to file reports of emissions in excess of the generally applicable standard within 48 hours of occurrence. To ensure protection of the PM–10 NAAQS, the affirmative defense would not apply on any day on which an exceedence of the revised PM–10 NAAQS was recorded on any monitor in the Fort Hall PM–10 nonattainment area. In addition, the affirmative defense would only be available in a penalty action. In order to protect the PM–10 NAAQS, the affirmative defense would not be available in an action seeking injunctive relief.

With respect to the affirmative defense for malfunctions and emergencies under the second approach, EPA is proposing an affirmative defense based on the affirmative defense for ''emergencies'' under the title V air operating permit program. *See* 40 CFR 70.6(g) and 71.6(g).[17] An ''emergency'' is defined as any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, where the increase in emissions are unavoidable. An emergency would not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation or operator error. *See* 40 CFR 70.6(g)(1) and 71.6(g)(2). In claiming an emergency, FMC would be required to establish, through properly signed, contemporaneous operating logs or other relevant evidence, that an ''emergency'' occurred and that FMC can identify the cause, the facility was being properly operated at the time, FMC took all reasonable steps to minimize levels of emissions that exceeded the standard, and that FMC notifies EPA within 48 hours of occurrence. Again, to ensure protection of the PM–10 NAAQS, the affirmative defense would not apply on any day on which an exceedence of the revised PM–10 NAAQS was recorded on any monitor in the Fort Hall PM–10 nonattainment area. In addition, the affirmative defense for emergencies would also only be available in a penalty action. In order to protect the PM–10 NAAQS, the affirmative defense would not be available in an action seeking injunctive relief. EPA specifically requests comment on whether to provide an affirmative defense to a penalty action for excess emissions due to startup, shutdown, scheduled maintenance, or emergency.

F. RACT Determination for Sources for Which EPA believes Additional Controls Are Required for RACT

1. Slag Handling Sources (Source 8)

a. Overview of Current Operations. Slag handling, from the furnace to final storage in the slag pile, is a major source of primary particulate at FMC. The alternative control technologies that are currently being used in the phosphorus industry and industries with similar processes today would reduce or eliminate PM–10 emissions from several separate and distinct emission sources at FMC, as discussed below. Therefore,

[16] A shutdown or startup necessitated by a malfunction or emergency would be treated as any other malfunction or emergency.

[17] Although EPA has proposed to delete the emergency defense from the title V program, *see* 60 FR 45530, 45559–60 (August 31, 1995), the basis for the proposed deletion was that the title V program should not be used as a vehicle to revise underlying applicable requirements. There was no suggestion that the elements of the affirmative defense set forth in the title V rules were in anyway insufficient or improper.

EPA evaluated RACT for these several slag handling sources as a single source.

Slag Pit, Tap Hoods, and Sump Vents

Slag is a waste byproduct generated within the furnace, which must be periodically removed. This process is called ''slag tapping'' and entails the furnace operator removing a plug from the furnace wall which in turn allows molten slag to flow out of the furnace into slag runners. Slag runners direct the molten slag out of the furnace building into an area behind the furnace building called the slag pits. Each furnace has two tap holes, runners, and pits. Each furnace is tapped for approximately 20 minutes each hour. In FMC's current operations, hot molten slag flows through slag runners from the furnaces along troughs in the furnace building floor to the slag pits located outside the furnace building. The slag is then cooled by exposure to the outside ambient air and application of water sprays. The water sprays (quench water) also serve to crack the cooling mass to aid in digging. ''Hot slag'', which has cooled significantly but is still at a temperature well above the outside ambient temperature, is dug by front-end loaders from each pit and loaded into trucks for transport to the slag pile. Digging and loading of slag occurs daily. After the slag is removed, the pit is lined with crushed slag from the recycle material pile as protection from the molten slag, to create a berm to contain the slag, and to aid in digging.

Fugitive emissions of PM–10 are emitted at several points in the process described above: from the tap hoods inside the furnace building; from the cooling slag in the slag pits; when the slag is dug by front-end loaders; and when the slag is dumped into trucks. In addition, emissions occur when recycle material (crushed slag) is loaded back into trucks and then dumped back into the slag pit to line the pits. Emissions from these sources account for 784 pounds of PM–10 each day and 143 tons per year.

Dump to Slag Pile

After slag has been loaded into trucks, it is hauled from the slag pit area to the final slag storage pile where it is dumped. The slag, although already broken up in the digging and loading process, is still fracturing from continued cooling. Significant fugitive PM–10 emissions occur when the slag is dumped from the trucks to the slag pile. EPA estimates that this process accounts for an additional 135 pounds per day and 20 tons per year of PM–10.

Recycle Material Pile

A portion of the slag, approximately one third, is recycled by sending it off site, where it is crushed, returned to FMC, and stored in a pile. The crushed slag is used to line the slag pit after the molten slag has been removed and hauled to the slag pile in order to create a berm to contain the molten slag and to aid in digging. EPA estimates PM–10 emissions from the recycle material pile to be negligible.

Total Emissions from Slag Handling Sources

EPA estimates the total combined PM–10 emissions from the handling of slag at FMC at 1045 pounds per day and 165 tons per year. Slag handling emissions account for 16% of FMC's total facility-wide daily emissions. The 1996 emissions from each slag handling source are outlined below:

Cooling slag: 209 pounds/day; 33 tons/year.
Digging slag: 173 pounds/day; 27 tons/year.
Loading slag into truck: 270 pounds/day; 43 tons/year.
Truck to slag pile: 132 pounds/day; 20 tons/year.
Slag tapping: 173 pounds/day; 28 tons/year.
Metal tapping: 88 pounds/day; 14 tons/year.
Total slag emissions 1045 pounds/day; 165 tons/year.

b. Evaluation of Alternative Control Technology. There are two currently available alternative control technologies for slag handling. ''Slag granulation'' was used by a thermal process elemental phosphorous plant that ceased operation in late 1995. ''Hot pour pot handling'' is used at the only other thermal process elemental phosphorus plant in the United States that remains in operation. Ten other elemental phosphorus facilities were previously operated in the United States and Canada, but have not been in operation for many years. EPA does not believe it is appropriate to consider the technology used by old, non-operational, and presumably obsolete, facilities in determining RACT. EPA therefore considered only the alternative control technologies employed by the other elemental phosphorous facility that remains in operation and the facility that recently ceased operation at the end of 1995.

Application of either slag granulation or hot pour pot handling would significantly reduce PM–10 emissions at almost all slag handling sources throughout the FMC facility, including slag tapping, ferrophos tapping, slag cooling, quench water, slag digging, slag dumping to slag pile, slag crushing, and lining the slag pits.

Slag Granulation

With slag granulation, molten slag flows down slag runners (troughs in the furnace floor) from the furnace to a concrete launder just outside the furnace building, where the slag flows into a high pressure and high volume water jet that instantly cools and solidifies the slag into sand-like granules. The slag is then de-watered and transported by conveyor belt to a small storage pile. The granulated slag is then loaded into trucks for transport to the slag pile.

EPA evaluated the slag granulation system at a facility near Butte, Montana, that ceased operations in 1995. Fugitive tap hood emissions from slag tapping would not be reduced through the implementation of slag granulation because the existing slag runners, capture hoods and control devices within the furnace building would remain. However, PM–10 emissions from the launder to final storage on the slag pile would be eliminated because of the large size and high moisture content of the granules. PM–10 emissions from slag cooling, digging, loading, crushing, lining the pits, and dumping to the slag pile would also be eliminated if the granulation process is used. EPA estimates the reductions from implementation of this technology could be on the order of 90% of current emissions from this source at FMC (or 946 pounds per day) if the granulation process is continuously operated.

There are significant engineering problems, however, with the slag granulation technology. During slag tapping, it is impossible to identify when ferrophos metal begins to flow out of the furnace. When this metal comes into contact with water, a violent explosion occurs. Although a system could potentially be designed to reduce the likelihood of explosion, the potential for explosion would always be present. FMC has verbally advised EPA of its concerns regarding the safety of the granulation system and explosions from ferrophos coming into contact with water.

In addition, during periods of extreme cold, like that experienced in Idaho and Montana, the conveyor belt that transports the slag granules from the de-watering process to the storage pile can freeze. It is therefore unlikely that, if the granulation system is implemented at FMC, 100% of all the slag will be processed using the granulation system. The facility that used this technology until recently estimated that only 50%

of its slag was processed by granulation. If this system were to be used at the FMC facility, the slag granulation system might not be functional during the winter and FMC would need to revert to the pit system, which would not result in the anticipated reductions in emissions during the winter. This is a significant concern because both the highest PM–10 concentrations and the most frequent violations of the pre-existing 24-hour PM–10 standard have generally been recorded on the Tribal monitors during winter.

EPA estimates that slag granulation, if implemented at FMC, would be able to reduce emissions on an annual basis by 85 tons per year. However, worst case daily emissions would not be reduced at all during the winter. Therefore, EPA does not consider slag granulation to be an appropriate control measure for ensuring attainment and maintenance of the 24-hour PM–10 NAAQS in the Fort Hall PM–10 nonattainment area.

Hot Pour Pot Handling

The second alternative control technology is hot pour pot handling. In this process, the slag is tapped from the furnace into short slag runners and then into large cast iron crucibles, or ''pots'', that are placed adjacent to or below the furnace. The slag tapping system (tap hole, runners, dump to pot, and pot) is totally enclosed in a ''pot room'' and kept under a negative pressure. All fumes and particulates are captured by the enclosure and evacuated to the furnace scrubbers (source 18d, 18e, 18f, and 18g). A small amount of PM–10 is emitted when the pot transporter opens the doors to the pot room and removes a pot for transport to the slag pile. Slag in the molten state is then transported to the slag storage pile where it is dumped in the molten state onto the pile.

Implementation of hot pour pot handling would significantly reduce fugitive and tap hood emissions from furnace tapping as compared with current levels at FMC, but it would not eliminate these emissions entirely. The current tap hood design could be improved to capture more emissions and send them to the control device. FMC has already installed redesigned tap hoods on two furnaces and has agreed to install this design on the two remaining furnaces as part of the RCRA consent decree.

Transport of molten slag and dumping of molten slag onto the slag pile will result in emissions of some PM–10 into the atmosphere. The cooling slag in the pot during transport, however, quickly forms a skin on the slag which prevents further emissions. Tapping slag into a pot eliminates the need for the slag pits. Therefore, PM–10 emissions from the slag pit, the crushing, and transporting of recycle slag would be eliminated.

EPA has estimated the anticipated emissions reductions that would be achieved at FMC through implementation of pot handling based on information provided by the facility that currently uses hot pour pot handling. With the pot handling system, PM–10 is emitted from the pots as the pots sit in the ''pot room,'' as the pots are transported to the slag pile, and during the dump of molten slag onto the pile. EPA believes that during these operations, PM–10 emissions are roughly equivalent to cooling slag emissions. EPA also believes that the emission factor for cooling slag of 3.74 pounds per hour, which was developed from source testing at FMC and which EPA used in the 1996 base-year emission inventory for FMC, is the most representative emission factor available. EPA estimates that 30% of the emissions associated with the cooling would occur within the ''pot room'', where the emissions would be captured and ducted to the tap hood control device. The remaining 70% of the emissions associated with the cooling slag would be emitted during transport, dumping to the pile, and cooling on the pile. These emissions would be uncontrolled. Assuming the quantity of slag to be processed at FMC remains roughly the same, the emissions in the FMC 1996 emission inventory for cooling slag will remain approximately the same, at 209 pounds per day. Assuming that 30% of emissions would be captured in the ''pot room'' and that the remaining 70% would continue to be emitted into the atmosphere, PM–10 emissions from this process would be reduced to 146 pounds per day and 23 tons per year at FMC. All other PM–10 emission sources associated with slag handling would be eliminated. In addition, the ambient impact of the remaining emissions should be further reduced through implementation of the pot handling system because the remaining emissions will be distributed over the larger area of the haul roads and dump pile.

Installation of the hot pour pot handling system at FMC may require a significant design and construction effort. The ground below part of the furnace building may need to be excavated to accommodate the pots for tapping, and the building itself might need to be modified to support the furnaces and enclose the pots. Conveyors or carriers would be required to move the pots into place for tapping. Finally, pots and trucks to haul the pots to the slag pile must be purchased and maintained.

As part of the RCRA consent decree, FMC has agreed to design, purchase, and install equipment and to modify the plant as necessary to implement a hot pour pot handling system for its slag ladling operations. In the RCRA consent decree, FMC has agreed to design and purchase the equipment by March 1, 1999, to install the ladling system and complete tapping system upgrades by November 1, 1999, for two furnaces, and to install the ladling system and complete the tapping upgrades for the other two furnaces by November 1, 2000. FMC has also agreed to purchase and install ventilation system upgrades for two of the furnaces by December 1, 2002.

FMC has estimated that it will cost $20.2 million in capital costs to install the ladling and upgrade tapping for all four furnaces and that pot handling will increase its annual operating costs by $200,000 a year (over its current operating costs). The ventilation system upgrades for two of the furnaces is estimated to cost an additional $5.3 million.

EPA believes that FMC's current furnace scrubber control system (sources 18d, 18e, 18f, and 18g) is adequate for the additional PM–10 emissions that will be captured and controlled after implementation of a hot pour pot handling system. EPA has therefore not included the $5.3 million for these upgrades in the RACT evaluation. Based on the cost estimates provided by FMC, the cost effectiveness of hot pour pot handling is estimated to be $8,260 per ton of PM–10 reductions based on annualized daily worst case emissions.

Conclusion

EPA believes that hot pour pot handling technology is a technologically and economically feasible alternative to the existing slag pit operations at FMC. The hot pour pot handling system is used by the only other currently-operating elemental phosphorous facility. FMC has agreed to install and implement the hot pour pot ladling system in the RCRA consent decree. These facts are strong evidence that the control technology is technologically and economically feasible. Particulate emissions from slag handling significantly contribute to PM–10 concentrations in the nonattainment area which exceed the level of the PM–10 standards. Application of hot pour pot handling is expected to reduce PM–10 emissions from the facility as a whole by 14%. As discussed below in section III.I. below, these reductions are

necessary for attainment of the 24-hour PM–10 NAAQS in the area. EPA therefore believes that hot pour pot handling represents RACT-level controls for slag handling. EPA is not aware of any other control technology for slag handling or any similar process that is expected to result in greater emission reductions.

c. Emission Limitations and Work Practice Requirements. EPA is proposing that FMC be prohibited from using the current slag pit process beginning November 1, 2000. This includes eliminating the discharge of molten slag from furnaces or slag runners onto the ground, slag pit floors (whether dressed with crushed slag or not), or other non-mobile permanent surfaces and eliminating the digging and loading of cold (solid) slag into transport trucks in the slag pit area. EPA is proposing that the prohibition of loading cold slag not apply to the lining of slag pots and the handling (loading, crushing, or digging) of cold slag for purposes of the lining of slag pots. The slag pots may need to be lined in order to protect the pots from the molten slag and prevent wear and tear on the pots.

After November 1, 2000, EPA is proposing that the slag pit and all other current slag handling operations be subject to an opacity limit of five percent. The five percent opacity limit will also apply to any enclosure separate from, but physically adjacent to, the furnace building that is built to enclose the pot handling system and will ensure that any such building is effectively sealed to prevent the escape of fumes to the atmosphere.

EPA is proposing several exceptions to the five percent opacity limitation for the slag pit and related slag handling operations. EPA is proposing an exemption for visible fugitive emissions due to fuming of molten slag from slag pots during transport from the pot handling room to the slag pile. This exemption is needed because, even though a skim forms quickly over the molten slag that inhibits fuming, some fuming will continue until the slag is completely solidified in the storage pile. EPA is also proposing an exemption for the dumping of molten slag on to the slag pile. There will be visible fuming from the molten slag as it flows from the pot onto the slag pile. Currently EPA is unaware of any control technology or process to reduce or eliminate these fuming emissions. EPA specifically seeks comment from the public on possible emission reduction techniques for this operation. Finally, EPA is proposing a limit of no visible emissions from the recycle material pile, because the pile consists of large material from which no visible emissions should be expected.

2. Calciner Scrubbers (Source 9)

a. Overview of Current Operations. FMC uses two traveling grate calciners to fuse green briquettes into nodules for furnace feed. Each calciner consists of a grate that carries green briquettes through the calciners. Heat is used to drive off volatile organics and to fuse the briquettes which makes the burden stable for handling until introduced into the furnace. There are two exhausts on each calciner. Particulate emissions from each of the two calciner stacks are vented first to a low energy venturi scrubber and then to a John Zink (tm) high energy hydrosonic venturi wet scrubber on each stack. There are two stacks for each John Zink scrubber and therefore, a total of eight calciner point sources. The daily worst case emission rate from the calciner stacks (all eight stacks combined) is 1204 pounds per day and 100 tons of PM–10 per year. The calciner scrubbers account for more than 18% of total PM–10 emissions from FMC.

A high energy wet scrubber is generally considered an effective control technology for particulate emissions. The control efficiency of the current combined low and high energy scrubbers at FMC, however, which were installed in order to comply with the radionuclide NESHAPs, is on the order of 50 to 60%. This level of control is far below the manufacturer's specification and below the results of pilot testing of this scrubber at FMC prior to full scale construction and operation. FMC has conducted considerable research and development on the current John Zink scrubbers in the course of assuring compliance with the radionuclide NESHAPs and in an attempt to achieve full calciner production. Little improvement in control efficiency, however, has been achieved since installation in 1992.

Failure of FMC's existing control system to achieve the desired emission reductions appears to be caused by the regeneration of submicron particles in quench water by evaporation of aerosol water droplets in the inlet gasses of the hydrosonic scrubbers. The high pressure fan compresses the gasses, causing isentropic heating of the gas stream as it passes through the fan upstream of the hydrosonic scrubbers. The heated subsaturated gas stream allows evaporation of a portion of the water droplets that are critical to the capture and entrainment of fine particulate, and thus reduces the capture efficiency of the John Zink scrubbers.

b. Evaluation of Alternative Control Technology.

Steam Injection With High Energy Wet Scrubbers

There are three alternative control technologies for this source. The first is to modify the existing John Zink scrubbers to improve performance by installing steam injection upstream of the scrubbers. Steam injection is an attempt to saturate the gas stream, create larger particles in the exhaust gasses, and, thus, increase the particle entrainment in the high energy wet scrubbing system.

Adding steam injection to FMC's existing system would help assure saturation of the gas entering the scrubbers and improve performance. EPA expects that the addition of steam injection could achieve an emissions rate of 0.01 grain per dry standard cubic foot of air. By EPA estimates, steam injection would result in an emission reduction of 23% over current emissions, or a total emission reduction from all calciner scrubbers of 23 tons per year from current conditions. There is a concern, however, that steam injection will not adequately saturate the gas stream—steam injection will increase the gas temperature and therefore increase its capability of holding more water vapor, thus defeating the intent of adding the steam.

Based on estimates provided by FMC in the RCRA settlement negotiations, the capital costs to modify the John Zink scrubbers for steam injection are expected to be $2.5 million and the annual operating expenses for the system are estimated to be $120,000. The cost effectiveness of steam injection is $38,120 per ton of particulate removed.

Spray Tower With Hydrosonic Scrubbers

The second technology, similar to steam injection, is installation of a spray tower between the low energy scrubber and the John Zink scrubbers. Spray will saturate the gas stream and create larger particle sizes and increase scrubber performance.

Installation of a spray tower between the low energy scrubbers and the John Zinc scrubbers on FMC's current control system for the calciners would provide a better means to saturate the gas stream, avoid regeneration of particulates, and avoid evaporation of water droplets at the inlet of the scrubber. The spray towers would need to be capable of generating water drops of 40 micrometers in diameter and thus allow for the rapid evaporation needed before entering the throat of the

hydrosonic. Water would not raise the temperature of the gas stream and would provide for a saturated gas stream. EPA estimates this technology would achieve an emission level of 0.005 grains per standard dry cubic foot (gr/dscf) resulting in a reduction of 75% over current emissions, or a total emission reduction from all calciner scrubbers of 74 tons per year. Based on worst case 24-hour emissions annualized over a year, the cost effectiveness of adding a spray tower is just under $5,000 per ton of PM–10 removed. Using the existing hourly emission rate of 6.27 pounds per hour from each outlet stack, a 75% reduction would mean the calciner scrubbers could achieve an emission limitation of 1.57 pounds per hour from each hydrosonic outlet stack.

Baghouse

The third technology is replacement of the existing John Zink scrubbers with baghouses. Baghouses typically have proven control efficiencies of 99% for particulate matter.

A baghouse is an efficient and commonly-accepted technology that could be used to control particulate emissions from the calciners. Expected emission reductions are 16 and 19 tons per year depending on the calciners. Installation of a baghouse system on each calciner exhaust is technically feasible but not desirable because of potential adverse environmental effects. The calciners are a significant source of Polonium-210, a pollutant regulated under the radionuclide NESHAPS. With a baghouse, which is a dry system that does not use water, Polonium-210 would be captured in the dust and would be retained on the baghouse walls, hoppers, and bags. This would create health and safety problems for maintenance workers. Capital costs for installation of a baghouse system for each calciner is estimated to be $1.7 million. Annual operating costs, including capital recovery, are estimated at $1.26 to $1.28 million for each calciner. This results in a cost effectiveness of the baghouse system of $57,032 per ton of particulate removed.

Conclusion

EPA believes that modification of the John Zink scrubbers by installation of a spray tower represents RACT-level controls. This alternative is technologically and economically feasible and could achieve results comparable to, or better than, a baghouse. FMC has agreed in the RCRA settlement to spend $2.5 million for the purchase, installation, modification, testing, and operation of the necessary equipment for enhancing the performance on the existing John Zink scrubbers on the calciners to achieve an overall control efficiency of 90%. The system is required to be installed, tested, and fully operational by December 1, 2000. EPA believes that installation of the spray towers will be less expensive and will result in a higher control efficiency than steam injection. EPA is not aware of any other alternative system that achieves comparable control efficiency.

c. Emission Limitations and Work Practice Requirements. EPA is proposing a mass emission limitation of 0.005 gr/dscf for each calciner stack, effective December 1, 2000. This is equivalent to a 75% reduction from current maximum emissions. FMC has committed to a 90% overall control efficiency for calciner emission reductions in the RCRA consent decree. EPA believes that this emission limitation can be achieved by at least one of the available alternate modifications to the existing control system.

EPA is not proposing an opacity limit for the calciner scrubbers. Emissions from the calciner scrubbers have a visible steam plume because of the wet scrubber. Method 9 states that opacity observations shall be made at the point of greatest opacity in that portion of the plume where condensed water is not present. 40 CFR part 60, appendix A, method 9, section 2.3. Because of the close proximity of the four stacks for each calciner at FMC, it is likely that the individual stack plumes will have combined into a single plume just prior to the point where the steam plume dissipates and it will therefore be very difficult to take a proper reading. As discussed below, EPA is proposing parametric monitoring and other monitoring, recordkeeping, and reporting requirements to ensure that the calciner scrubbers comply with the proposed emission limit.

3. Elevated Secondary Condenser Flare and Ground Flare (Source 26a)

a. Overview of Current Operations. Furnace gasses are used as fuel for the calciners. Excess furnace gasses are ducted to either the elevated carbon monoxide (CO) secondary condenser flare or the ground flare. Furnace CO gas, in excess of that required to fuel the calciners, is flared in the elevated secondary CO flare to maintain pressure in the furnaces and CO lines. CO gas in excess of that needed to maintain pressure is then flared in the ground flare. The CO gas contains elemental phosphorous which is oxidized in the flares to phosphorous pentoxide and emitted as particulate matter.

In addition to flaring excess furnace CO gas, the secondary condenser periodically becomes contaminated with solidified phosphorus and must be ''flushed'' with one of two processes. One process is called a ''mini-flush'' and it occurs on a daily basis. The second process is a ''hot-flush'' in which the entire condensing system is flushed by elevating the temperature of the condensing system to liquify and flush all phosphorus in the system. Emissions from these processes are included in the 1996 emission inventory for FMC and are identified separately.

The initial 1990 base year emissions inventory for the area, which was relied on by IDEQ in its May 1993 SIP submittal, estimated emissions from the elevated secondary condenser and ground flares at 23.7 pounds per day of PM–10. The 1996 emission inventory estimated emissions from these sources at 350 pounds per day of PM–10 on a worst case daily basis. Emissions from mini-flushes and hot-flushes are estimated at 2740 pounds per day of PM–10. The disparity in emissions between the 1990 inventory and the 1996 inventory for FMC is because the 1990 inventory did not include mini-flush emissions nor additional information and analysis of furnace gas composition.

b. Evaluation of Alternative Control Technology. EPA initially proposed ducting excess CO furnace gas from both the elevated secondary condenser flare and the ground flare to an enclosed burner and control device during public workshops in Pocatello and Fort Hall in September 1997. In the RCRA consent decree, FMC has agreed to this approach and to reduce emissions during flaring, mini-flushes and hot flushes by 95%. In the burner/combustion device, the excess CO furnace gas will be burned under controlled combustion conditions to oxidize CO to carbon dioxide and elemental phosphorus to form particulate phosphorus pentoxide. The off-gas from the enclosed burner/combustion device will be sent to a high efficiency scrubber where the particulates will be removed before the gas is vented to the atmosphere. FMC anticipates removal of over 95% of particulates using this system. FMC has estimated the capital costs of this system at $18.5 million, with an additional $700,000 in annual operating costs. The cost effectiveness, based on worst case daily emissions over the year, is $5,172 per ton. FMC has agreed to have this new CO burner installed and fully operational by January 1, 2001.

The secondary condenser flare and ground flare are sources unique to the elemental phosphorus industry. The excess CO burner which FMC has designed and proposes to implement is the only alternative control technology currently available of which EPA is aware. EPA believes that the excess CO burner is both technically and economically feasible. FMC's agreement to install and operate the technology as part of the RCRA consent decree is persuasive evidence of this fact. As discussed below in section III.I., the emission reductions resulting from implementation of the CO burner are necessary to attain the PM–10 standard.

EPA is not aware of any other control technology for the flares that would be more effective in reducing emissions than the excess CO burner.

c. Emission Limitations and Work Practice Requirements. EPA is proposing a mass emission limitation of 6.5 pounds per hour of PM–10 emissions from the excess CO burner, effective January 1, 2001. This limitation is derived from the total estimated emissions from the flares (2740 + 350 pounds per day) divided by 24-hours per day and assuming 95% control efficiency. EPA proposes to require that the reference test method be conducted during operating conditions that represent maximum emissions, that is, during either a mini-flush or a hot-flush.

EPA is proposing a limit of no visible emissions, effective January 1, 2001. Although the 1995–1996 visible emission survey reported visible emissions from this source, EPA believes that installation and operation of the CO burner should enable FMC to meet a requirement of no visible emissions.

Because of the high emissions from the flares and the predicted impact on ambient PM–10 concentrations, EPA is also proposing interim work practice measures that FMC must comply with until the excess CO burner is fully operational. These work practice requirements are based on interim measures FMC has agreed to implement as part of the RCRA consent decree to reduce the ambient impact of emissions from the flares until the excess CO burner is fully operational. EPA is proposing that FMC limit mini-flushes to no more than 50 minutes per day (based on a monthly average). FMC's 1997 data indicate that mini-flush durations averaged 100 minutes per day, which would result in an average emission reduction of 50%. EPA is also proposing a prohibition on mini-flushes unless the flow rate of recirculated condenser water (phossy water) falls to or below 1800 gallons per minute or the secondary condenser outlet temperature meets or exceeds 36 degrees Centigrade. These operating parameters are designed to ensure there is no bias toward conducting mini-flushes at night, when winds are generally lower and there is less dispersion.

Under the RCRA consent decree, the operating parameters for conducting mini-flushes do not apply during periods of ''malfunction,'' as defined in 40 CFR 60.2. To ensure consistency with the RCRA consent decree, EPA is similarly proposing that the operating parameters for conducting mini-flushes not apply during periods of ''malfunction.'' EPA is also proposing that FMC be required to submit a bimonthly report on mini-flushes showing FMC's compliance with the interim emission reduction requirements.

4. Phosphorus Loading Dock (Source 21)

a. Overview of Current Operations. The phosphorus loading dock (or ''phos dock'') is the location where condensed phosphorus from the primary and secondary condensers is further clarified, stored, and loaded into railcars for shipment. Phosphorus is transferred by water displacement so that it is never exposed to air and thereby does not burn. At the phosphorus-water interface is a layer called sludge which is an emulsion of phosphorus, water and contaminants. Because sludge does not form a distinct layer between the phosphorus or water layers, it is difficult for operators to determine when tanks are full. Spillage of sludge, phosphorus, and phossy water has been a frequent occurrence at the FMC facility, leading to phosphorous fires which in turn lead to excessive fugitive emissions from the phos dock (source 21b) that in turn overwhelm and cause excessive emissions from the Andersen scrubber on the phos dock (source 21a).

EPA has not been able to quantify fugitive emissions or excessive stack emissions from the phos dock attributable to spillage and other ''upset'' [18] conditions because such events are intermittent and of varying duration. The emission inventory for FMC lists point source emissions from the phos dock at 34 pounds per day. This emissions estimate, which represents so called ''worst case emissions,'' represents emissions from the Andersen scrubber assuming normal operations and full phosphorus production. It does not include the fugitive emissions due to ''upset'' conditions or the excessive emissions from the scrubber that occur when the Andersen scrubber is overwhelmed due to ''upset'' conditions.

Emissions from the phos dock area, however, are of great concern to the public and the Tribes. The phos dock is located at the front of the FMC facility in view of the general public from the nearby highway. Based on EPA's own observations and verbal communications from the Tribal Air Quality Office, EPA believes that fugitive emissions and excess stack emissions from the phos dock due to ''upset'' conditions could be contributing to the measured exceedences of the PM–10 NAAQS at the Tribal monitors. FMC also appears to be concerned about the public perception that visible emissions from the phos dock area contribute to PM–10 levels that exceed the standard, as evidenced by FMC's commitment in the RCRA consent decree to make improvements in the phos dock area, which is discussed in more detail below.

b. Evaluation of Alternative Control Technology. The phos dock currently employs capture and control technology. Captured emissions from the sumps and launder are ducted to the phos dock Andersen scrubber. The Andersen scrubber is an efficient control device for PM–10 that is primarily comprised of phosphorus pentoxide, with a control efficiency of 99.5% for this pollutant stream. Much of the equipment used to capture (as oppose to control) emissions from the phos dock at the FMC facility, however, is old and obsolete. Sump tops are corroded, pumps are old, and seals leak. The launder is warped, resulting in phossy water pools and phosphorus fires. Spills have contaminated storage tank insulation with phosphorus requiring continuous flooding of tank insulation with water. There is no single control device or upgrade to the control system that is needed for reducing emissions from the phos dock. Rather, replacement and upgrading of the existing emissions capture system at numerous places throughout the phos dock and improved instrumentation for storage tanks to help operators avoid spillage are needed to prevent the recurrence of ''upset'' conditions which result in fugitive and excessive stack emissions in the phos dock area.

FMC has committed as a SEP project in the RCRA consent decree to spend $750,000 by January 1, 2000 to upgrade

[18] EPA is using the term ''upset'' conditions here to mean operations that do not reflect normal operating conditions. EPA does not believe that these conditions qualify as a ''malfunction'' or an ''emergency'' because EPA believes they could be avoided through better design or better operation and maintenance.

and improve the capture and control of emissions from the phos dock area. This commitment involves basic improvements in measuring phosphorus levels in storage tanks, upgrading design, and replacing old, worn, and obsolete equipment. FMC has acknowledged that this SEP project is intended to reduce emissions that result from ''upset'' conditions.

The phos dock is a source unique to the elemental phosphorous industry, and EPA is not aware of any control technology that would control emissions from this source better than the Andersen scrubber. EPA believes that the improvements to the capture system for emissions from the phos dock area that FMC has agreed to undertake as part of the RCRA consent decree are both technically and economically feasible, as evidenced by FMC's agreement. As discussed above, the emission inventory does not include the fugitive emissions and excessive stack emissions in the phos dock area attributable to upset conditions. EPA nonetheless believes that the improvements to the phos dock area designed to eliminate ''upsets'' are necessary for attainment of the PM–10 standard because the attainment demonstration has not accounted for the emissions from the phos dock area attributable to ''upset'' conditions. In other words, the attainment demonstration assumes that the only emissions from the phos dock area are 34 pounds per day of emissions from the Andersen scrubber under normal operating conditions. To the extent fugitive and point source emissions from the phos dock area exceed this amount, those emissions must be eliminated for attainment to be demonstrated.

c. Emission Limitations and Work Practice Requirements. EPA proposes that, effective November 1, 1999, emissions from the phos dock Andersen scrubber (source 21a) to 0.007 grains per dry standard cubic feet, a limit based on the emissions for this source included in the emissions inventory. EPA believes that FMC can achieve this limit on a continuous basis if FMC eliminates the routine ''upset'' conditions that have been occurring in the phos dock area through the scheduled improvements to the capture system for the phos dock area and instituting better operations and maintenance procedures. Under the RCRA consent decree, the improvements to the phos dock area are scheduled to be completed by November 1, 1999.

EPA is proposing an opacity limitation of five percent averaged over six minutes for point source emissions from the phos dock Andersen scrubber, effective November 1, 1999. Again, EPA believes that, with the scheduled improvements to the phos dock area, FMC should be able to achieve continuous compliance with this requirement on and after November 1, 1999. During the 1995–1996 visible emissions survey, visible emissions from the phos dock Andersen scrubber were observed for three 15 minute observation periods, with reading taken every 15 seconds. During two of the 15 minute observation periods, no visible emissions were observed. During the third 15 minute observation period, visible emissions above five percent opacity were observed for ten of the 60 observations in that 15 minute period, with a high of 40%. Although the average opacity over this third 15 minute period was 4.75%, the highest six minute average within this third 15 minute period was 10.625% and would represent an exceedence of the proposed five percent opacity limit. EPA believes that the scheduled improvements and upgrades to the phos dock, however, will allow FMC to achieve compliance with the proposed five percent opacity limitation on a continuous basis because these improvements and upgrades will prevent emissions that overwhelm the phos dock Andersen scrubber by preventing phos-fires.[19] An opacity limit of five percent averaged over six minutes allows for limited excursions of short duration over five percent opacity.

For fugitive emissions emanating from the phos dock (source 21b), EPA is proposing an opacity limitation of ten percent averaged over six minutes, effective November 1, 1999. This limitation would apply to fugitive emissions emanating from any operation or location within the phos dock area. Again, EPA believes that the reduction in spills, improvements to the capture system, improved housekeeping, and the other scheduled improvements and upgrades to the phos dock area will enable FMC to comply with the ten percent opacity limit on a continuous basis.

5. Furnace Building (Source 18c)

a. Overview of Current Operations. The furnace building contains several sources of fugitive emissions that can escape through doors, windows, vents, and holes in the furnace building. On the ground level of the building, there are the slag and metal tap hoods from which tap emissions can escape. Fugitive emissions from the furnace building from slag and metal tapping are included in the emissions estimate for slag handling.

On the top level of the furnace building (called the ''burden level''), the furnace feed (called ''burden'') is transported by conveyor belt to feed burden bins above each furnace. Dust build-up on the burden level floor and fugitive emissions from transfer points is a source of fugitive emissions from the burden level of the furnace building. The emissions inventory lists emissions from the burden level of the furnace building at .013 pounds per day, which was derived from information provided by FMC. More recently, FMC has asserted that the current maximum emissions from the burden level of the furnace building could be as high as 2538 pounds per day. Although FMC has provided no documentation to explain the basis for this very high emissions estimate, EPA believes that the difference between the .013 pounds per day included in the emissions inventory and the 2538 pounds per day figure recently provided by FMC are emissions that FMC estimates could occur when the venting dampers on the furnace building are opened as a safety precaution and during other ''upset'' conditions.[20]

b. Evaluation of Alternative Control Technology. EPA expects fugitive emissions from the lower level of the furnace building to be greatly reduced through the implementation of hot pour pot handling, which FMC has committed to undertake as part of the RCRA consent decree as discussed in section III.F.1. above. As part of that project, slag and metal tap hood emissions in the furnace building will be reduced by installation of upgraded tap hoods with reduced head space and increased sweep velocities. Under the RCRA consent decree, this project is to be completed by November 1, 2000.

As part of the RCRA consent decree, FMC has also agreed to spend at least $1.5 million to reduce fugitive emissions from the furnace building burden level through increases in ventilation volume and capture efficiency for the conveyor belts and burden bins at the burden level,

[19] The observation forms from the 1995–1996 survey note that no railcar loading occurred during any of the three observation periods. EPA does not expect phos dock emissions to be higher during railcar loading than at other times because phosphorus is produced, clarified, and transferred to storage tanks on a continuous basis, not just during railcar loading. EPA therefore believes that the opacity observed during the 1995–1996 survey is representative of normal operations.

[20] Again, EPA is using the term ''upset'' conditions here to mean operations that do not reflect normal operating conditions. EPA does not believe that these conditions qualify as a ''malfunction'' or an ''emergency'' because EPA believes they could be avoided through better design or better operation and maintenance.

improved instrumentation and controls on the furnace bins to reduce spillage, and improved housekeeping systems. New controls and instrumentation will reduce reliance on manual operation and visual observation in filling burden bins, thus reducing the occurrence of furnace fires and emissions due to ''upset'' conditions. Improved housekeeping through more frequent clean-up of spillage by installation of a vacuum system and upgraded operator procedures will reduce re-entrainment of dust as wind blows through the upper level of the furnace building. As with the phos dock, this SEP project is designed, in part, to reduce the frequency of ''upsets.'' Under the RCRA consent decree, these changes are to be completed by April 1, 2002.

EPA believes that increasing ventilation volume and capture efficiency and improving process control instrumentation at the burden level of the furnace building is economically and technologically feasible, as evidenced by FMC's agreement to undertake these projects under the RCRA consent decree. As discussed above, the emission inventory may not include all of the fugitive emissions at the burden level, in particular, emissions resulting from the opening of the venting dampers on the building and other ''upset'' conditions. EPA nonetheless believes that the improvements to the furnace building are necessary for attainment of the PM–10 standard because the attainment demonstration has not accounted for the emissions from the burden level attributable to ''upset'' conditions and, according to FMC, these emissions can be quite high. In other words, the attainment demonstration assumes that the only emissions from the burden level of the furnace building are .013 pounds per day. To the extent fugitive emissions from the burden level exceed this amount, those emissions must be eliminated for attainment to be demonstrated.

c. Emission Limitations and Work Practice Requirements. EPA is initially proposing an opacity limitation of 20% opacity averaged over six minutes using Method 9 for the furnace building. Twenty percent is the generally applicable opacity limit found in most state implementation plans for sources that are not subject to more stringent limits. Opacity limits in excess of 20% are rare. During the 1995–1996 visible emissions survey, visible emissions from the furnace building were observed for 15 minutes, at 15 second intervals. The readings ranged from five percent to 45%, with a 15 minute average of 17.5% and the highest six minute average of 22%, which would represent an exceedence of the proposed 20% opacity standard. EPA nonetheless believes that FMC can comply with a 20% opacity limit on a continuous basis even before the scheduled improvements to the slag handling practices and the burden level of the furnace building are implemented if FMC institutes improved housekeeping practices, such as increased diligence on the part of burden level operators in filling burden bins without spills and promptly cleaning up any spills that occur. EPA believes FMC can implement such improved housekeeping practices quickly and with little additional expenditure. EPA finds no basis for proposing an opacity limit in excess of 20% for the furnace building, even before the slag handling and furnace burden building improvements are implemented.[21]

Once the improvements to the slag handling process and the furnace building are completed by April 1, 2002, fugitive emissions from processes within the furnace building should be greatly reduced. From this date on, EPA believes that FMC should be able to meet a five percent opacity limitation averaged over 6 minutes using Method 9. EPA notes that this five percent limit is higher than the limit of no visible emissions that is proposed for most other building at the FMC facility.

G. Monitoring, Work Practice, Recordkeeping, and Reporting Requirements

EPA believes it has broad latitude, when promulgating a Federal Implementation Plan, to include such monitoring, work practice, recordkeeping, and reporting requirements as are necessary or appropriate to ensure compliance with the proposed standards. Including such requirements in the FIP itself is particularly appropriate where, as here, the FIP is a regulation that applies only to a single facility and a greater degree of specificity is possible than in the case of a generally applicable rule that applies to many source categories or many sources. Therefore, EPA is proposing as part of this FIP monitoring, work practice, recordkeeping, and reporting requirements that EPA believes will help assure compliance with proposed emission limitations and work practice requirements.

EPA notes that the FMC facility is a major stationary source under title V of the Clean Air Act and will be required to have an operating permit under CAA section 502(a) (referred to here as a ''title V permit''). Because FMC is located in Indian country, FMC must apply for and will be subject to a title V permit issued by EPA under the federal operating permit program, 40 CFR part 71, unless the Shoshone-Bannock Tribes apply for and receive EPA delegation or approval of an operating permit program under the Tribal Authority Rule and 40 CFR part 70.[22] Revisions to the part 71 program, which will establish the date FMC is required to submit an application for a title V permit to EPA, are expected to be promulgated in early 1999.

Title V operating permits are required to contain all applicable requirements of the Clean Air Act to which the source is subject; monitoring, recordkeeping, and reporting requirements to ensure compliance with all applicable requirements; and standard permit terms addressing administrative issues. A major goal of the title V operating permit program is to clarify what Clean Air Act requirements apply to a source in a single document, thereby better enabling the source, EPA, states, tribes, and the public to better understand the requirements to which the source is subject and whether the source is meeting those requirements. *See* generally 56 FR 21712 (May 10, 1991).

Once this FIP is promulgated, FMC will also be subject to the compliance assurance requirements (referred to as ''CAM'') of 40 CFR part 63 for those emission units with control devices that have potential pre-control device emissions of 100 tons per year or more of PM–10. 40 CFR 64.2(a). As such, FMC will be required to submit to the permitting authority along with its title V operating permit application a monitoring plan that meets the design requirements of 40 CFR 64.3, 64.4, and 64.5. The requirements of the approved monitoring plan will then become requirements of FMC's title V permit. 40 CFR 64.6 and 64.7.

Because FMC is required to apply for a title V permit and to submit a CAM plan, EPA has carefully considered the extent to which monitoring, recordkeeping, and reporting requirements necessary to assure compliance with the proposed PM–10

[21] In this regard, EPA notes that an air operating permit issued by the State of Idaho to the FMC facility in 1980 contained a facility-wide opacity limit of 20%. The 20% opacity limit purported to apply to, among other things, the furnace building. Although EPA believes that the State of Idaho does not and, at the time of issuance of the permit, did not have authority to regulate FMC, EPA notes that FMC has claimed over the years that it was capable of complying with the State-issued permit.

[22] The Shoshone-Bannock Tribes could also request full or partial delegation of the part 71 program from EPA under 40 CFR 71.10 and 40 CFR part 49 (Tribal Authority Rule), in which case EPA would remain the permit-issuing authority.

emission limitations and work practice requirements should be included in the proposed FIP or should be deferred to the title V permit issuance process. As stated above, EPA believes it has broad latitude, when promulgating a FIP, to include such monitoring, recordkeeping, and reporting requirements as are necessary or appropriate to ensure compliance with the proposed standards, especially in the case of a source-specific FIP. Because of the serious air quality problem that exists in the vicinity of FMC and the importance of compliance with the proposed emissions limitations and work practice standards to the protection of air quality in the vicinity of FMC, EPA is proposing as part of this FIP monitoring, work practice, recordkeeping, and reporting requirements for the purpose of ensuring compliance with the proposed emission limitations and work practice standards. Additional monitoring, work practice, recordkeeping, and reporting requirements will be included in the title V permit as necessary and appropriate to assure compliance with the requirements of this FIP and the requirements of the title V program. For example, as discussed below, EPA proposes that FMC be required to take prompt corrective action when certain operating parameters fall outside designated ranges. Although FMC is required to submit the ranges to EPA under this FIP, the precise ranges will be approved as part of FMC's title V permit. As another example, although FMC is required to submit an operations and maintenance plan as part of this proposed FIP, EPA may determine it is appropriate to include certain provisions of the plan in FMC's title V permit. To clarify this point, EPA proposes to include a provision that specifically authorizes additional monitoring, recordkeeping, and reporting requirements to be established in FMC's title V permit as appropriate. EPA has also clarified that, although FMC's obligation to submit proposed parameter ranges for certain units is in addition to and separate from FMC's obligations under the CAM rule, monitoring for any pollutant specific emissions unit that meets the design criteria of 40 CFR 64.3 and the submittal requirements of 40 CFR 64.4 may be submitted to meet the requirement to submit proposed parameter ranges under the proposed FIP.

1. Monitoring and Work Practice Requirements

a. Annual Source Testing of Point Sources. EPA is proposing that FMC be required to conduct a performance test to measure PM–10 emissions from most point sources on an annual basis. This will result in a requirement to test more than twenty-five individual emission sources each year. FMC could meet this requirement by implementing an in-house testing program, as many pulp mills in Washington and Oregon have done in response to similar annual testing requirements, or by hiring an outside consultant to perform the testing. The proposed FIP is written to allow the source tests to be conducted on a staggered basis so long as each annual test for a particular source is conducted within 12 months of the most recent previous test.

b. Monitoring Devices.

i. Sources Controlled by Baghouses

When operating properly, the particulate removal efficiency of a baghouse is very high (99.9 to 99.99% efficient). Two primary problems, however, can result in increased emissions from systems controlled by baghouses. First, reduced gas flow through the baghouse system due to excessive buildup of the dust cake on the bags or other deterioration in the system results in inadequate dust capture at the emission point controlled by the baghouse and increased fugitive emissions at the capture point. Second, holes or tears in the bags allows the dirty gas to leak through the bags.

EPA proposes that FMC be required to install two monitoring devices to guard against these problems. First, EPA proposes to require FMC to install on all point sources controlled by baghouses a device for continuously measuring and recording pressure drop across the baghouse. Pressure drop is an indirect measure of flow rate through the baghouse system. Monitoring pressure drop is an effective means for detecting reduced gas flow through the baghouse system due to excessive buildup of the dust cake on the bags or other deterioration of the baghouse system. Monitoring pressure drop is also important because operation of a baghouse under excessively high pressure drop conditions can lead to accelerated bag deterioration by erosion through pin holes in the bags. Monitoring pressure drop is also useful in diagnosing other problems that may be contributing to high particulate emissions from the baghouse system. FMC may have in fact already installed devices to measure pressure drop on some of its baghouses because such devices are commonly used to evaluate the performance of a baghouse.

EPA proposes to require that FMC submit a proposed parameter range of operation for pressure drop for each baghouse that is representative of compliance with the applicable emission limitations and work practice standards. The parameters would be approved through the title V permit issuance process or as a modification to FMC's title V permit. Once those proposed parameter ranges are established in FMC's title V permit, EPA proposes that FMC be required to maintain and operate the source to stay within the approved range and to take immediate corrective action to bring source operation back within the approved range if an excursion from the approved range occurs. Operating outside of an approved range would require corrective action. Similar monitoring is routinely required for baghouses by New Source Performance Standards. *See generally* 40 CFR part 60.

To provide early detection of leaks and holes in bags, EPA proposes to require FMC to install and operate a triboelectric monitor on each baghouse to continuously monitor and record the readout of the instrument response for all baghouses. This type of baghouse leak detector is sensitive enough to detect even very small leaks. Given the normal variation in pressure drop, monitoring pressure drop alone is not effective for detecting smaller holes and tears in bags. A triboelectric monitor is also more likely to detect a leak than a continuous opacity monitor and is much less expensive than an opacity monitor. In addition, because a triboelectric detector provides a continuous output, a leak will be detected much earlier than by periodic inspection of the equipment or visible emission observations.

EPA proposes that the triboelectric monitors be installed, maintained, and operated in accordance with the manufacture's specifications and EPA's guidance document, *Office of Air Quality Planning and Standards (OAQPS): Fabric Filter Bag Leak Detection Guidance*, EPA 454/R–98–015 (Sept. 1997). The guidance document discusses the process for establishing a range of operation so that an ''alarm,'' as defined in and as determined in accordance with the guidance, does not occur. EPA proposes to require that FMC be required to operate each baghouse so as to stay within the approved range and to take immediate corrective action to bring source operation back within the approved range in the event of an excursion.

ii. Sources Controlled by Scrubbers

With respect to the calciner scrubbers (source 9) and the Medusa Andersen scrubbers that control the furnaces (sources 18d, 18e, 18f, and 18g), EPA

proposes to require FMC to install devices for the continuous measurement and recording of pressure drop, scrubber liquor flow rate, and scrubber liquor pH on all sources controlled by scrubbers. Pressure drop and scrubber liquor flow rate are common indicators of performance of scrubbers. *See generally* 40 CFR part 60. The calciners and the furnaces are controlled by scrubbers and have significant phosphorous pentoxide emissions. Phosphorous pentoxide dissolves in water to form phosphoric acid, which can be re-emitted as phosphorous pentoxide if the scrubber liquor becomes overloaded due to inadequate blowdown and makeup with fresh water. Monitoring scrubber liquor pH provides a good indication of adequate removal of phosphoric acid from the scrubber liquor through sufficient scrubber blow down. Furthermore, low scrubber liquor pH can result in equipment corrosion and a corresponding reduction in the effectiveness of the control device.

EPA also proposes to require that FMC submit a proposed parameter range of operation for pressure drop, scrubber liquor flow rate, and scrubber liquor pH for each source controlled by a scrubber that is representative of compliance with the applicable emission limitations and work practice standards. Again, the parameters would be approved through the title V permit issuance process or as a modification to FMC's title V permit. Once those proposed parameter ranges are established in FMC's title V permit, EPA proposes that FMC be required to maintain and operate the source to stay within the approved range and to take immediate corrective action to bring source operation back within the approved range if an excursion from the approved range occurs.

For the other two sources controlled by scrubbers at the FMC facility, the phos dock Andersen scrubber (source 21a) and the excess CO burner (source 26b), EPA proposes to require that FMC install and operate a device to continuously measure and continuously record the pressure drop across the scrubber. As with the other monitoring devices, EPA proposes to require that FMC submit a proposed parameter range of operation for pressure drop that is representative of compliance with the applicable emission limitations and work practice standards, to maintain and operate the source to stay within the approved range, and to take immediate corrective action if an excursion from the approved range occurs.

iii. Pressure Relief Vents

As discussed above in section III.E.5. above, EPA proposes to require FMC to install continuous temperature indicators and recorders on each of the pressure relief vents (source 24) to detect when a pressure release from a furnace begins and ends.

c. Operations and Maintenance Plan. EPA proposes that FMC be required to develop, submit to EPA, and implement a written operations and maintenance (O&M) plan covering all sources of PM–10 emissions at the FMC facility, including uncaptured fugitive and general fugitive emissions of PM–10. The purpose of the O&M plan is to ensure each source at the FMC facility will be operated and maintained consistent with good air pollution control practices and procedures for maximizing control efficiency and minimizing emissions at all times, including periods of startup, shutdown, malfunction, emergency, and to establish procedures for assuring continuous compliance with the emission limitations, work practice requirements, and other requirements of this proposed FIP. The development of O&M plans is required of sources under several standards recently promulgated under section 112 of the CAA, as well as under some state implementation plans. *See* 40 CFR 63.545; 40 CFR 63.803(a) and 63.803(c); 40 CFR 63.306(a); 40 CFR 63.105(b); WAC 173–400–101(4); OAPCA Regulation 1, Section 5.03 (f); PSAPCA Regulation 1, Section 5.05(e).

Requiring FMC to develop and implement an O&M plan is particularly appropriate for several reasons. First, approximately 22% of all emissions from FMC are uncaptured fugitive emissions. EPA has not proposed mass emission limitations for these fugitive sources because of the difficulty of measuring such emissions. Good operations and maintenance procedures are especially important for controlling fugitive emissions because much of the control efficiency is dependent upon diligent housekeeping requirements, including vacuum sweeping, application of dust suppressants, and replacing expendable parts and supplies prior to breakdown. Second, EPA believes that many of the air quality problems attributable to the FMC facility have in the past, at least in part, been due to the lack of comprehensive operations and maintenance procedures at FMC. This, in turn, has led to frequent ''upsets'' at the FMC facility.

EPA proposes to require that the O&M plan address certain identified topics, in addition to good operations and maintenance procedures for all sources at FMC. The identified topics include procedures for minimizing fugitive PM–10 emissions from materials handling, storage piles, roads, staging areas, parking lots, mechanical processes, and other processes, including weekly inspection; procedures for the application of dust suppressants to and the sweeping of storage piles, roads, staging areas, parking lots, or any open area as appropriate to maintain compliance with applicable emission limitations; specifying parts or elements of control equipment needing replacement after some set interval prior to breakdown or malfunction; process conditions that indicate need for repair, maintenance or cleaning of control or process equipment (such as the need to open furnace access ports or holes); procedures for the weekly visual inspection of all control equipment; procedures for the regular maintenance of control equipment; procedures that meet or exceed manufacturer recommendations for the inspection, maintenance, operation, and calibration of each required monitoring device; procedures for the rapid identification and repair of equipment or processes causing an emergency and for reducing or minimizing the duration of and emissions resulting from any emergency; and procedures for the training of staff in the above procedures.

As proposed, FMC is required to submit the O&M plan to EPA for review. Although there is no explicit requirement for EPA approval of the plan, EPA can require FMC to modify the plan. FMC may revise the plan, as necessary and appropriate, so long as the plan meets the identified requirements and so long as FMC provides EPA with copies of any revisions. FMC is required to review and revise the plan as necessary at least annually. Failure to implement the O&M plan would be a violation of the FIP.[23]

In the RCRA consent decree, FMC agreed to take measures to minimize fugitive emissions from the north-east portion of the facility, which includes the main shale pile (source 2), the emergency/contingency raw ore shale pile (source 3), some roads (source 22), and related staging areas. More specifically, FMC has agreed to submit a dust control plan that specifies the actions FMC will take, including applying more dust suppressant,

[23] As discussed above, EPA may determine it is appropriate to include certain provisions of FMC's O&M plan in FMC's title V permit. In that event, FMC could revise those provisions of the O&M plan only in accordance with the permit revision procedures of 40 CFR part 70 or 71, as appropriate.

increasing cleaning and sweeping of roads, increasing water-application during dry weather, and using slag to cover unpaved areas. EPA believes the requirements of the RCRA consent decree in this regard are consistent with the O&M requirements in this proposal.

d. Other Periodic Inspections and Testing. EPA is also proposing specific inspection requirements for certain sources in order to provide a basis for identifying and correcting control equipment and process problems in a timely manner and to minimize emissions. For each source subject to an opacity limit of no visible emissions, EPA is proposing that an observer make a visual observation of visible emissions from each source at least once each week, and that FMC take corrective action if any visible emissions are observed for any period of time during the observation period. Because the proposed standard for these sources is no visible emissions, the observation of visible emissions would constitute a violation. A visible emissions observation is required upon completion of the corrective action to ensure a return to compliance. Such periodic self-evaluation requirements are common in the NSPS. *See generally* 40 CFR part 60.

For each fugitive emission source and point source subject to a numerical opacity limit, EPA is proposing that an observer make a visual observation of visible emissions from each such source at least once each week. If visible emissions are observed, FMC would be required to determine if any corrective action is needed and, if so, to take appropriate corrective action. Based on the visible emissions surveys, EPA believes that visible emissions at the FMC facility frequently indicate that the source in question is not being properly operated or is in need of maintenance. The observance of visible emissions would require corrective action but would not constitute a violation if prompt action was taken, unless the numerical opacity standard is exceeded. Where corrective action is taken, a visual observation is required upon completion of the corrective action. This weekly inspection requirement is intended to ensure prompt identification and correction of control equipment and process problems.

EPA proposes to allow FMC, after conducting weekly inspections for one year without documenting any visible emissions with respect to a particular source to conduct monthly inspections for that source. The inspection schedule would revert to a weekly schedule for a source if visible emissions were observed during any monthly inspection of that source.

With respect to the main shale pile (source 2) and the emergency/contingency raw ore storage pile (source 3), EPA is proposing that FMC analyze a representative sample of each pile for moisture content using ASTM Standard D2216–92 at least once each month. FMC is required to submit a proposed sampling plan to EPA for review and approval 30 days prior to any required sampling. All sampling must thereafter adhere to the plan.

e. Monitoring Malfunctions and Data Availability. EPA proposes to require that monitoring with all required monitoring devices, such as pressure drop measurement devices and temperature detectors, be operated at all times that the process being monitored is in operation, except during monitoring malfunctions, associated repairs, and required quality assurance or control activities. Monitoring data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities will not be used for data averages and minimum data availability requirements, but data collected at all other times would be used in assessing control device operation. These requirements, including the definition of ''monitoring malfunction,'' are based on similar provisions in the Compliance Assurance Monitoring rule. *See* 40 CFR 64.7(c). EPA has also included a minimum data availability requirement for all monitoring devices of 90% on a monthly average basis.

2. Recordkeeping Requirements

In general, EPA proposes to require that FMC keep records of all required monitoring information. Parts 70 and 71 require records of all required monitoring information that include the date, place and time of the sampling or measurement, the analytical methods used, the results of the analysis, and the operating conditions at the time of sampling. *See* 40 CFR 70.6(a)(3)(ii)(A) and 71.6(a)(3)(ii)(A). Parts 70 and 71 also require the retention of all required monitoring data and support information for a period of at least five years. *See* 40 CFR 70.6(a)(3)(ii)(B) and 71.6(a)(3)(ii)(B). Because FMC is subject to the title V operating permit program and will be issued a title V operating permit, EPA believes it is appropriate to make the general recordkeeping requirements in the proposed FIP consistent with parts 71 and 70.

EPA has also more specifically identified the recordkeeping requirements relating to each required inspection and visible emissions observation, including the date of the inspection or observation, what was observed, and the time, date, and nature of any corrective action taken; the parameters required to be measured under the monitoring requirements; any excursions from approved ranges, and the time, date, and nature of any corrective action taken; the time, date, and duration of each pressure release from a furnace pressure relief vent; the time, date, and duration of each flaring of the emergency CO flares; application of dust suppressants; frequency of road sweeping; and moisture content records. Until the secondary condenser flare is eliminated, EPA proposes that FMC be required to keep records of all mini-flushes, include the date, time, duration, water flow rate, and temperature.

EPA also proposes that FMC be required to keep a maintenance log for each control device, which will include information on all inspections and maintenance activities on the control device, and evidence of certification and recertification of all individuals who conduct required visible emissions observations.

3. Reporting Requirements

Because FMC will be subject to a title V operating permit, EPA used the reporting requirements of parts 70 and 71 as a starting point for the reporting requirements proposed in this FIP. Thus, EPA proposes to require that FMC submit a report of all required monitoring every six months, which report must clearly identify all instances of deviations. *See* 40 CFR 70.6(a)(3)(iii)(A) and 71.6(a)(3)(iii)(A). EPA has specifically identified certain items that must be addressed in this report, including excess emissions and excursions from approved operating ranges, corrective action taken, and a written report of each annual performance test. Parts 70 and 71 require sources to submit a compliance certification at least annually and more frequently if required by the permitting authority. 40 CFR 70.6(c)(5) and 71.6(c)(5). Given the contribution of FMC to the PM–10 nonattainment problem in the Fort Hall PM–10 nonattainment area, EPA proposes to require that FMC submit, as part of the semi-annual report, a compliance certification meeting the requirements of parts 70 and 71 on a semi-annual basis. The semi-annual report must be certified by a ''responsible official'' for FMC as to its truth, accuracy, and completeness in accordance with the compliance certification requirements of parts 70 and 71.

EPA also proposes to require the prompt reporting of violations of the

requirements of the proposed FIP, and has used the default definitions of ''prompt reporting'' in part 71 for those situations where the proposed FIP does not establish a required time period for reporting. *See* 40 CFR 71.6(a)(3)(iii)(B). This would require reporting to EPA by telephone or fax, within 48 hours of occurrence, all excess emissions that continue for more than two hours, followed by a written notice within ten days. All other violations would be reported as part of the semi-annual report. The requirement to report excess emissions applies regardless of whether FMC asserts that the excess emissions were due to startup, shutdown, scheduled maintenance, or emergency.

As discussed above, EPA proposes that FMC be required to submit a proposed range of operation for each parameter required to be monitored under the proposed FIP, along with documentation demonstrating that operating the source within the proposed range will provide a reasonable assurance of compliance with the proposed emission limitations and work practice standards. The proposed range of operation will be approved by EPA through the title V permit issuance process.

Until the secondary condenser flare is eliminated, EPA proposes to require that FMC submit a bi-monthly report to EPA regarding the operating parameters for each mini-flush and the total mini-flush time in minutes for each month, the number of operating days for the secondary condenser, and the average minutes per operating day for each month. This requirement is based on a requirement in the RCRA consent decree.

EPA strongly encourages FMC to provide to the Shoshone-Bannock Tribes Air Quality Program copies of all information required to be submitted to EPA under this proposed FIP.

H. Compliance Schedule

Sections 172(c)(1) and 189(a)(1)(C) of the CAA, read together, require that moderate area PM–10 nonattainment plans submitted by States provide for implementation of RACM and RACT by existing sources of PM–10 no later than December 10, 1993. In cases where the moderate area deadline for the implementation of RACM/RACT had passed at the time the state submitted its plan, EPA has concluded that the RACM/RACT required in the SIP must be implemented ''as soon as possible.'' *Delaney* v. EPA, 898 F.2d 687, 691 (9th Cir. 1990). EPA has interpreted this requirement to be ''as soon as practicable.'' See 55 FR 41204, 41210 (October 1, 1990). Where, as here, EPA is exercising its discretionary authority under sections 301(a) and 301(d)(4) of the CAA and 40 CFR 49.11(a) to promulgate a FIP for a moderate PM–10 nonattainment area in Indian country as necessary and appropriate to assure implementation of RACT in order to protect air quality during the transition to implementation of newly-promulgated PM NAAQS, EPA believes it is appropriate to require that the controls be implemented as soon as practicable.

In general, EPA is proposing that FMC be required to comply with the emission limitations, work practice requirements, and monitoring, recordkeeping, and reporting requirements beginning 60 days after the effective date of this FIP proposal. This includes emission limitations and work practice requirements for those sources for which EPA believes no additional controls or process changes will be necessary for compliance, and the general monitoring, recordkeeping, and reporting requirements of this FIP proposal. Together with the proposed 30-day delay in the effective date of the FIP, FMC will have 90 days from the date the FIP is published until it will be required to comply. EPA believes that this is sufficient time to ensure compliance with those requirements for which no additional controls or process changes will be necessary, as well as to implement general monitoring, recordkeeping, and reporting requirements.

EPA is proposing to give FMC additional time to comply with those requirements that necessitate design work, purchase of equipment, process or control modifications, or construction of new processes or controls. In proposing the compliance date for these requirements, EPA is proposing the shortest possible compliance date, in light of the time and expenditures necessary for the various projects, and keeping in mind the total number and extent of the production and control changes necessary for compliance with this FIP proposal. Just as States may give consideration to the amount of expenditures and time required of sources to implement control measures in determining the time period for implementation in the SIP planning process (*see Criteria for Granting 1-Year Extensions of Moderate PM–10 Nonattainment Area Attainment Dates, Making Attainment Determinations and Reporting on Quantitative Milestones*, from Sally L. Shaver, Director of Air Quality Strategies and Standards Division, to EPA Regional Air Division Directors (November 14, 1994), pp. 14–15), EPA believes it is appropriate to consider the time and expenditures necessary for FMC to comply with the requirements proposed in this FIP in determining the appropriate compliance period.

For those sources for which EPA believes additional controls are needed for compliance and for which FMC has agreed to implement additional controls as part of the RCRA consent decree, EPA is proposing as the compliance dates in this FIP proposal the compliance dates established in the RCRA consent decree. EPA's major goal in negotiating the SEP projects in the RCRA consent decree was the same as EPA's goal in this FIP proposal: achieving reductions in PM–10 emissions at the FMC facility as expeditiously as practicable. The dates agreed to in the RCRA consent decree and proposed in this notice achieve that goal. EPA believes FMC's agreement to install the controls as SEPs as part of the RCRA consent decree has accelerated the date by which EPA could reasonably propose to require full compliance with the proposed FIP by at least two years. This is because FMC began implementing the SEP projects necessary for compliance with this FIP proposal before publication of this FIP proposal and long before final action will be taken on this FIP proposal. Because FMC has already begun to implement the control technology as part of the RCRA settlement, it is practicable for FMC to comply with the emission limitations and work practice requirements at a much earlier date. For example, FMC and EPA reached an agreement in principle as part of the RCRA settlement in May 1998 to have the hot pour slag ladling fully operational by November 1, 2000. This agreement was based on an understanding that, acting as expeditiously as practicable, it would take FMC 28 months to complete design and installation of the slag ladling and have the system fully operational. Because FMC has already agreed to install slag ladling as part of the RCRA settlement, it is possible for FMC to comply with the proposed emission limits and related requirements as of November 1, 2000. Had FMC not already agreed to undertake the slag ladling as part of the RCRA settlement, it would have been reasonable for EPA to give 28 months from the effective date of final action on this FIP to comply with the slag ladling requirements.

Under this FIP proposal, the emission limitations and work practice requirements relating to the following sources will come into effect as follows:

1. Phosphorus loading dock, November 1, 1999.
2. Slag handling, November 1, 2000.
3. Calciners, December 1, 2000.
4. Secondary condenser flare and ground flare by January 1, 2001, although interim measures apply 60 days after the effective date of the proposed FIP.
5. Fugitive emissions from the furnace building, April 1, 2002.

If final action on the proposed FIP occurs after any of these dates, EPA proposes that the emission limitations and work practice requirements relating to the source in question become effective 60 days after the effective date of final action on the FIP.

With the compliance schedule proposed above, EPA anticipates that all proposed RACT-level requirements for the Fort Hall PM–10 nonattainment area will be in place and fully operational by April 1, 2002. Many of the new controls should be in place well before that time. EPA does not expect PM–10 values above the level of the revised PM–10 NAAQS to be recorded on the Tribal monitors after April 1, 2002. Because attainment of the PM–10 NAAQS requires three calendar years of clean data, the area may not be eligible for an attainment designation for the applicable PM–10 standards until after that date. Given the number and extent of the projects FMC will need to undertake to achieve compliance with the proposed FIP, as well as the amount of the necessary expenditures, however, EPA believes that the proposed FIP achieves implementation of RACT as expeditiously as practicable.

As stated above, in general, EPA is proposing that FMC comply with all monitoring, work practice, recordkeeping, and reporting requirements no later than 60 days after the effective date of final action on this proposal. An exception is for monitoring requirements that require installation of new equipment, such as a device for measuring pressure drop. In general, where EPA is requiring the installation and calibration of new monitoring equipment, EPA proposes that FMC have 180 days after the effective date of this FIP to comply. Because it will take time for FMC to select, install, and test the required monitoring equipment, EPA believes that a 180-day period for compliance with these requirements is reasonable. EPA notes that this is the same time period allowed for installation of monitoring equipment in the New Source Performance Standards. *See generally* 40 CFR part 60.

I. Effectiveness of Proposed Control Measures

The proposed control strategy, as discussed above, establishes emission limitations and work practice requirements that will entail the installation of significant control technology affecting five sources of PM–10 at FMC. Table 5 below presents FMC emissions before and after implementation of the proposed control strategy and shows the overall percentage reduction achieved.

TABLE 5.—ATTAINMENT DEMONSTRATION 24–HOUR PM–10 STANDARD FMC 1996 ACTUAL WORST CASE PM–10 EMISSIONS SUMMARY FULL IMPLEMENTATION OF PROPOSED CONTROL STRATEGY

[Pounds/day]

Source name	PM–10 emissions before control	PM–10 emissions after control
POINT SOURCES:		
Ground Flare	2281	114
Calciners	1204	301
Elevated Secondary CO Flare	828	41
All other Baghouses	446	446
Medusa Anderson (four furnaces)	269	269
Calciner Cooler Vents	188	188
Pressure Relief Vents	99	99
Cooling Tower	96	96
Phos Dock	34	34
Boilers	13	13
Emergency CO Flares	12	12
Subtotal Point Sources	5470	1613
PROCESS and OTHER FUGITIVES:		
Slag Handling:		
Slag tap	173	.....
Metal Tap	88	.....
Slag cooling	209	146
Slag digging	173	.....
Loader to truck	270	.....
Truck to slag pile	135	.....
Slag handling subtotal	1045	146
All Roads	190	190
All Piles	163	163
Dry fines material recycle	33	33
Nodule fines handling truck loading	12	12
Nodule fines stockpiling	7	7
Subtotal Fugitives	1450	551
Grand Total	6920	[1] 2164

[1] 69% reduction.

TABLE 6.—ATTAINMENT DEMONSTRATION ANNUAL PM–10 STANDARD FMC 1996 ANNUAL EMISSIONS SUMMARY, FULL IMPLEMENTATION OF PROPOSED CONTROL STRATEGY

Tons/year

Source name	PM–10 emissions before control	PM–10 emissions after control
POINT SOURCES		
Ground Flare	197	10
Calciners	100	25
Elevated Secondary CO Flare	62	3
All other Baghouses	49	49
Medusa Anderson (four furnaces)	43	43
Calciner Cooler Vents	27	27
Pressure Relief Vents	1	1
Cooling Tower	18	18
Phos Dock	6	6
Boilers	2	2
Emergency CO Flares	0	0
Subtotal Point Sources	505	184
PROCESS and OTHER FUGITIVES		
Slag Handling:		
Slag tap	28	.....
Metal Tap	14	.....
Slag cooling	33	23
Slag digging	27	.....
Loader to truck	43	.....
Truck to slag pile	20	.....
Slag handling subtotal	165	23
All Roads	25	25
All Piles	23	23
Dry fines material recycle	6	6
Nodule fines handling truck loading	2	2
Nodule fines stockpiling	1	1
Subtotal Fugitives	222	80
Grand Total	727	[1] 264

[1] 64% reduction.

The above tables reflect reductions in emissions from three sources as a result of this FIP proposal: slag handling (source 8), the calciner scrubbers (source 9), and the elevated secondary condenser and ground flares (source 26a). As discussed above, the improvements to the phos dock that FMC has agreed to undertake as part of the RCRA consent decree and the resulting emission limitations and work practice requirements proposed for the phos dock are designed to eliminate emissions due to ''upset'' conditions, which emissions were not included in the emission inventory in the first place. In other words, the proposed improvements to the phos dock area and the proposed emission limitations for that source are designed to ensure emissions from that source do not exceed the level of emissions included in the emission inventory for the phos dock. Therefore, there is no emission reduction attributed to the phos dock Anderson scrubber as a result of this FIP proposal in Table 5 ''Attainment Demonstration for 24-hour PM–10 NAAQS'' or Table 6 ''Attainment Demonstration for the Annual PM–10 NAAQS''. The same is true for the furnace building, although some of the anticipated emission reductions from this source are reflected under the category ''slag handling.''

EPA anticipates that the emission limitations and work practice requirements proposed in this FIP, when considered together, will result in an overall reduction in daily worst case emissions of 69% from the levels contained in the emission inventory.

EPA believes that the emission limitations and work practice requirements, and the related monitoring, recordkeeping, and reporting requirements will result in attainment of the pre-existing 24-hour PM–10 NAAQS and annual PM–10 NAAQS as expeditiously as practicable. As discussed above, measured ambient air quality serves as the basis for determining the level of control necessary to attain the standard. Attainment of the annual standard requires that the expected annual PM–10 concentration be less than or equal to the level of the annual NAAQS. Attainment of the pre-existing 24-hour standard requires that the expected number of exceedences of the NAAQS be less than or equal to one per year. Conceptually, determining the PM–10 concentration for a particular site that must be reduced to the level of the NAAQS, thereby assuring attainment, is known as determining the ''design value.'' The design value is then used to determine the level of control needed.

There are several recommended methods for determining the design concentration as specified in the *PM–10 SIP Development Guideline* (EPA–460 2–86–001, June 1987). For purposes of this proposed FIP, EPA used the log-normal graphical estimation method, with air quality data collected from October 8, 1996 through March 1997 at all three Tribal monitors. The highest 24-hour design value estimated for any site was for the primary site, at 433 μg/m3. EPA therefore concluded that, in order for the Fort Hall PM–10 nonattainment area to attain the 24-hour PM–10 standard, the second highest

PM–10 concentration must be reduced from 433 μg/m3 to 150 μg/m3, a reduction of 65%. The second highest PM–10 level is used because the PM–10 NAAQS allows, over a three-year period, on average, one exceedence per year.

As discussed above, because the annual PM–10 NAAQS is based on a three-year average, there is insufficient monitoring data from the Tribal monitors to document a violation of the pre-existing annual PM–10 NAAQS. The only calendar year for which there is complete data available in order to estimate the annual design value is 1997. The highest annual average PM–10 concentration for 1997, 66.3 μg/m3, was recorded at the primary site. In order to attain the annual standard, this value would need to be reduced to 50 μg/m3, a reduction of 16.3 μg/m3 or 25%.

EPA believes the control strategy proposed in this notice will achieve a 69% reduction of daily worst case PM–10 emissions from FMC on a facility-wide basis. The sources for which EPA believes emission reductions will be necessary to meet the proposed emission limitations—slag handling, the calciner scrubbers, the furnace building, the phos dock, and the elevated secondary condenser and ground flares—are not seasonal in nature. Emissions from these sources remain relatively constant throughout the year. Thus, EPA expects that the emission reductions will occur throughout the year and will produce sufficient reductions in annual emissions to achieve the annual standard. Table 6 above shows the 64% reduction in annual emission that are expected from implementation of the control strategy. In short, EPA believes that, so long as the proposed control strategy achieves an overall emission reduction from the FMC facility of 69%, the proposed control strategy should result in attainment of the pre-existing 24-hour and annual PM–10 standards.

As discussed above, EPA promulgated revised PM–10 standards on July 18, 1997. *See* 62 FR 38651. Although the levels of the 24-hour and annual standards remain unchanged, there has been a change in the statistical form for determining compliance with the 24-hour NAAQS (from an expected exceedence rate to averaging the 99th percentile concentration from three years of data) and a change in the procedures for reporting PM–10 concentrations at reference conditions to PM–10 concentrations at local temperature and pressure. After converting previously reported PM–10 concentrations to local temperature and pressure and calculating the 99th percentile of the data base for each site and the arithmetic mean for each site for each year, EPA believes that the control strategy for attaining the pre-existing PM–10 NAAQS (as provided for in this proposed notice) will be sufficient to attain and maintain the revised 24-hour and annual PM–10.

J. EPA's Plan for Addressing other PM–10 Planning Issues

The following section contains a brief discussion of the other planning requirements applicable to states with moderate PM–10 nonattainment areas under the pre-existing PM–10 NAAQS. EPA will address these other PM–10 planning requirements that apply to states with PM–10 nonattainment areas subject to the pre-existing PM–10 NAAQS as necessary or appropriate in future rulemaking proposals following final promulgation of the section 172(e) rulemaking.

1. PM–10 Precursors

As stated above, under CAA section 189(e), the control requirements applicable under SIPs to major stationary sources of PM–10 must also be applied to major stationary sources of PM–10 precursors, unless EPA determines such sources do not contribute significantly to PM–10 levels in excess of the NAAQS in the area. ''Significantly'' is not defined in either the Act or in the General Preamble. Rather, EPA has indicated that for moderate areas, the determination should be made on a case-by-case basis. 57 FR at 13539.

As discussed above, it is unclear whether PM–10 precursors contribute significantly to the PM–10 exceedences that have been recorded on the Tribal monitors. EPA expects to have the information necessary to make that determination by the summer of 1999.

EPA is aware that the Shoshone-Bannock Tribes and citizens in the Fort Hall PM–10 nonattainment area believe that PM–10 precursors contribute to air quality problems in the area and should be addressed. In general EPA shares this concern over these very small particulates. On July 18, 1997, EPA promulgated new, more stringent, air quality standards for PM–2.5. These standards were promulgated to address the serious health effects associated with these very small particles, of which PM–10 precursors make up a significant fraction. EPA, the State, and the Tribes are just now in the process of establishing PM–2.5 air monitoring stations in the Pocatello and Fort Hall areas to better define and characterize the nature and extent of the fine particulate air quality problem near Pocatello and Fort Hall. Even if EPA later determines, based on the ongoing analysis of the filters from the Tribal monitors, that PM–10 precursors do not need to be addressed for the Fort Hall PM–10 nonattainment area in the context of the revised PM–10 planning process, EPA believes it is likely that particulate precursors will need to be addressed in the area under the new PM–2.5 standard.

2. Quantitative Milestones

For plan revisions demonstrating attainment of the PM–10 NAAQS, States are required to include in moderate PM–10 state implementation plans quantitative milestones which are to be achieved every three years and which demonstrate reasonable further progress (RFP), as defined in section 171(l), toward attainment by the applicable attainment date. *See* CAA section 189(c). Section 172(c)(2) of the Act also states that nonattainment plans shall require RFP. RFP is defined in section 171(1) as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by this part [D] or may reasonably be required by [EPA] for the purpose of ensuring attainment of the applicable [NAAQS] by the applicable date.''

3. New Source Review

States with moderate and serious PM–10 nonattainment areas are required to implement a permit program for the construction and operation of new and modified major stationary sources of PM–10. *See* CAA section 189(a).

4. Contingency Measures

States with moderate PM–10 nonattainment areas are required to include in their state implementation plans contingency measures that become effective without further action by EPA upon a determination that the area has failed to achieve reasonable further progress or to attain the PM–10 NAAQS by the attainment date. See CAA section 172(c)(9).

IV. Request for Public Comment

EPA is soliciting public comment on all aspects of this proposed FIP. Interested parties should submit comments in triplicate, to the address listed in the front of this Notice. Public comments postmarked by May 13, 1999 will be considered in the final action taken by EPA.

V. Administrative Requirements

A. Executive Order (E.O.) 12866

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), all ''regulatory

actions'' that are ''significant'' are subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. A ''regulatory action'' is defined as ''any substantive action by an agency (normally published in the **Federal Register**) that promulgates or is expected to result in the promulgation of a final rule or regulation, including * * * notices of proposed rulemaking.'' A ''regulation or rule'' is defined as ''an agency statement of general applicability and future effect, * * *''

The proposed FIP is not subject to OMB review under E.O. 12866 because it applies to only to a single, specifically named facility and is therefore not a rule of general applicability. Thus, it is not a ''regulatory action'' under E.O. 12866.

B. Regulatory Flexibility Analysis (RFA)

Under the Regulatory Flexibility Act, 5 U.S.C. section 601 *et seq.*, EPA generally must prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. §§ 603, 604 and 605(b).

''Small entities'' include small businesses, small not-for-profit enterprises, and small governments. The proposed FIP only affects one plant, which is classified in SIC Code 2819. The Small Business Administration definition of ''small business'' for this SIC code is less than 1,000 employees. Because FMC has more than 1,000 employees, it is not a small entity under the RFA. Therefore, pursuant to 5 U.S.C. section 605(b), I certify that the proposed FIP will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995, P.L. 04–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed rules and for final rules for which EPA published a notice of proposed rulemaking, if those rules contain ''federal mandates'' that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If section 202 requires a written statement, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives. Under section 205, EPA must adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Administrator publishes with the final rule an explanation why EPA did not adopt that alternative. The provisions of section 205 do not apply when they are inconsistent with applicable law. Section 204 of UMRA requires EPA to develop a process to allow elected officers of state, local, and tribal governments (or their designated, authorized employees), to provide meaningful and timely input in the development of EPA regulatory proposals containing significant Federal intergovernmental mandates.

EPA has determined that the proposed FIP contains no federal mandates on state, local or tribal governments, because it will not impose any enforceable duties on any of these entities. EPA further has determined that the proposed FIP is not likely to result in the expenditure of $100 million or more by the private sector in any one year. Although the proposed FIP would impose enforceable duties on an entity in the private sector, the costs are expected to be less than $50 million. Consequently, sections 202, 204, and 205 of UMRA do not apply to the proposed FIP.

Before EPA establishes any regulatory requirements that might significantly or uniquely affect small governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the proposed FIP will not significantly or uniquely affect small governments, because it imposes no requirements on small governments. Therefore, the requirements of section 203 do not apply to the proposed FIP. Nonetheless, as discussed in Section I.D. above, EPA worked closely with representatives of the Tribes, the City of Pocatello, the City of Chubbuck, and representatives of other small governments in the area during the development of today's proposed action. In particular, since the early 1990s, EPA has worked closely with the Air Quality Program of the Tribes and representatives of the Fort Hall Business Council in developing the proposed FIP.

D. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB must approve all ''collections of information'' by EPA. The Act defines ''collection of information'' as a requirement for ''answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *'' 44 U.S.C. 3502(3)(A). Because the proposed FIP only applies to one company, the Paperwork Reduction Act does not apply.

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This executive order applies to any rule that: (1) is determined to be ''economically significant'' as that term is defined in E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 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. The FMC FIP is not subject to E.O. 13045 because it implements a previously promulgated health or safety-based federal standard.

F. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and EPA's position supporting the need to issue

the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

As stated above, the proposed FIP will not create a mandate on state, local or tribal governments because it will not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule. Nonetheless, as discussed in Section I.D. above, EPA worked closely with representatives of the Tribes during the development of today's proposed action. In particular, since the early 1990s, EPA has worked closely with the Air Quality Program of the Tribes and representatives of the Fort Hall Business Council in developing the proposed FIP.

G. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

The proposed FIP does not impose substantial direct compliance costs on the communities of Indian tribal governments. The proposed FIP imposes obligations only on the owner or operator of FMC. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

As discussed in Section I.D. above, EPA worked closely with representatives of the Tribes during the development of today's proposed action. In particular, since the early 1990s, EPA has worked closely with the Air Quality Program of the Tribes and representatives of the Fort Hall Business Council in developing the proposed FIP.

H. National Technology Transfer and Advancement Act of 1995 (NTTAA)

Section 12(d) of NTTAA, Pub. L. No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary standards.

The proposed reference test methods for the emissions limitations and work practice requirements in this FIP proposal are technical standards. EPA is proposing a voluntary consensus standard, ASTM D2216–92, Standard Test Method for Laboratory Determination of Water (Moisture) Content of Soil and Rock, as the reference test method for determining compliance with the moisture content requirement for the main shale pile and the emergency/contingency raw ore shale pile. This standard was developed by the American Society for Testing and Materials (ASTM). ASTM standards are published in the Annual Book of ASTM Standards (a multiple volume set) and are available at major libraries.

With respect to the other emission limitations and work practice requirements proposed in this notice, EPA is proposing as the reference test methods test methods that have been promulgated by EPA. *See* Methods 201, 201A, and 202, 40 CFR part 51, appendix M; Methods 1, 2, 2C, 2D, 3, 3A, 4, 5, and 22 (in part), 40 CFR part 60, appendix A. Before proposing these reference test methods, EPA conducted a search to identify potentially applicable voluntary consensus standards. EPA did not identify any potentially applicable standards that could be used in place of Methods 201, 201A, and 202, 40 CFR part 51, appendix M; or Methods 1, 3, 3A, 4, 5, and 22 (in part), 40 CFR part 60, appendix A. Therefore, EPA proposes to use those test methods as the reference test methods for this FIP proposal.

EPA did identify ASTM D3464–96, Standard Test Method for Average Velocity in a Duct Using a Thermal Anemometer, as being potentially applicable for determining gas velocity and volumetric flow rate, as do EPA Methods 2, 2C, 2D. EPA does not propose to use this ASTM method in this FIP proposal, however, because the use of this voluntary consensus standard would be impractical. ASTM D3464–96 is intended for determining air velocities in HVAC ducts, fume hoods, vent stacks of nuclear power stations and in performing model studies of pollution control devices. By its terms, application of this ASTM standard is limited to certain temperature, moisture, and contaminant loading conditions which can not always be met for the proposed monitoring applications at the FMC facility. Therefore, use of ASTM D3436–96 is impractical for purposes of this proposed FIP.

EPA welcomes comments on this aspect of the proposed FIP and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: January 29, 1999.

Carol Browner,

Administrator.

40 CFR part 52 is proposed to be amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

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

Subpart N—Idaho

2. Subpart N is proposed to be amended by adding § 52.676 to read as follows:

§ 52.676 Control Strategy: Fort Hall PM–10 Nonattainment Area, Fort Hall Indian Reservation, Idaho.

(a) Applicability. This regulation applies to the owner or operator of the FMC Corporation's elemental phosphorus facility located on the Fort Hall Indian Reservation in Idaho, including any new owner or operator in

the event of a change in ownership of the FMC facility.

(b) Definitions. The following definitions apply to this section. Except as specifically defined herein, terms used in this section retain the meaning accorded them under the Clean Air Act.

Bag leak detection guidance means *Office of Air Quality Planning and Standards (OAQPS): Fabric Filter Bag Leak Detection Guidance*, EPA 454/R–98–015 (Sept. 1997)

Certified observer means a visual emissions observer who has been properly certified using the initial certification and periodic semi-annual recertification procedures of 40 CFR part 60, appendix A, Method 9.

Emergency means any situation arising from sudden and reasonably unforeseeable events beyond the control of the owner or operator of the FMC facility, including acts of God, which requires immediate corrective action to restore normal operation. An emergency shall not include events caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

EPA means United States Environmental Protection Agency, Region 10.

Emission limitation and emission standard mean a requirement which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operations or maintenance procedures to assure continuous emission reduction.

Excess emissions means emissions of an air pollutant in excess of an emission limitation.

Excursion means a departure from a parameter range approved under paragraphs (e)(3) or (g)(1) of this section.

FMC or FMC facility means all of the pollutant-emitting activities that comprise the elemental phosphorus plant owned by or under the common control of FMC Corporation in Township 6 south, Range 33 east, Sections 12 and 13, and that lie within the exterior boundaries of the Fort Hall Indian Reservation, in Idaho, including, without limitation, all buildings, structures, facilities, installations, material handling areas, storage piles, roads, staging areas, parking lots, mechanical processes and related areas, and other processes and related areas. For purposes of this section, the term ''FMC'' or ''FMC facility'' shall not include pollutant emitting activities located on lands outside the exterior boundaries of the Fort Hall Indian Reservation.

Fugitive emissions means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. For the purposes of determining compliance with the opacity limitations that apply to fugitive sources only, fugitive emissions includes all emissions which do not actually pass through a stack, chimney, vent, or other functionally equivalent opening for which an opacity standard is established in this rule.

Method 5 is the reference test method described in 40 CFR part 60, appendix A, conducted in accordance with the requirements of this section.

Method 9 is the reference test method described in 40 CFR part 60, appendix A.

Methods 201, 201A, and 202 are the reference test methods described in 40 CFR part 51, appendix M, conducted in accordance with the requirements of this section.

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or unusual manner. Failures that are caused by poor maintenance or careless operation are not malfunctions.

Mini-flush means the process of flushing elemental phosphorus, which has solidified in the secondary condenser, to the elevated secondary condenser flare or to the ground flare, and thus into the atmosphere.

Monitoring malfunction means any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not monitoring malfunctions.

Opacity means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

Owner or operator means any person who owns, leases, operates, controls, or supervises the FMC facility or any portion thereof.

Particulate matter means any airborne finely-divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

PM–10 or PM–10 emissions means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal ten micrometers emitted to the ambient air as measured by an applicable reference method such as Method 201, 201A, or 202, or an equivalent or alternative method specifically approved by the Regional Administrator

Regional Administrator means the Regional Administrator, EPA Region 10, or a duly designated representative of the Regional Administrator.

Road means any portion of the FMC facility upon which a motorized vehicle has reasonable access for movement or for which there is visible evidence of previous vehicle access (*e.g.*, visible wheel tracks).

Scheduled maintenance means planned upkeep, repair activities, and preventative maintenance on any source, including the shutdown and startup of such equipment.

Shutdown means the cessation of operation of a source for any purpose.

Slag pit area means within 100 yards of the furnace building at the FMC facility.

Startup means the setting in operation of a source for any purpose.

Source means any building, structure, facility, installation, material handling area, storage pile, road, staging area, parking lot, mechanical process or related area, or other process or related area which emits or may emit particulate matter.

Title V permit means an operating permit issued under 40 CFR part 70 or 71.

Tribes means the Shoshone-Bannock Tribes.

Visual observation means the continuous observation of a source for the presence of visible emissions for a period of ten consecutive minutes conducted in accordance with section 5 of EPA Method 22, 40 CFR part 60, appendix A, by a person who meets the training guidelines described in section 1 of Method 22.

Visible emissions means the emission of pollutants into the atmosphere, excluding uncombined condensed water vapor (steam) that is observable by the naked eye.

(c) Emission limitations and work practice requirements. (1) Except as otherwise provided in paragraph (c)(2) of this section, there shall be no visible emissions from any location at the FMC facility at any time, as determined by a visual observation.

(2) For each source identified in Column II of Table 1 to this section, the owner or operator of the FMC facility shall comply with the emission limitations and work practice requirements established in Column III of Table 1 to this section for that source.

(3) The opacity limits for the following fugitive emission sources, which are also identified in Column II of Table 1 to this section, apply to adding of material to, taking of material

from, reforming, or otherwise disturbing the pile: main shale pile (source 2), emergency/contingency raw ore shale pile (source 3), stacker and reclaimer (source 4), recycle material pile (source 8b), nodule pile (source 11), nodule fines pile (source 13), and screened shale fines pile (source 14).

(4) (i) Except as provided in paragraph (c)(4)(ii) of this section, beginning November 1, 2000, the following activities shall be prohibited:

(A) The discharge of molten slag from furnaces or slag runners onto the ground, pit floors (whether dressed with crushed slag or not), or other non-mobile permanent surface.

(B) The digging of solid slag in the slag pit area or the loading of slag into transport trucks in the slag pit area.

(ii) The prohibition set forth in paragraph (c)(4)(i) of this section shall not apply to the lining of slag pots and the handling (including but not limited to loading, crushing, or digging) of cold slag for purposes of the lining of slag pots.

(5)(i) Beginning January 1, 2001, no furnace gas shall be burned in the elevated secondary condenser flare or the ground flare (source 26a).

(ii) Until December 31, 2000, the owner or operator of the FMC facility shall take the following measures to reduce PM–10 emissions from mini-flushes and to ensure there is no bias toward conducting mini-flushes during night-time hours.

(A) Mini-flushes shall be limited to no more than 50 minutes per day (based on a monthly average) beginning January 1, 1999. Failure to meet this limit for any given calendar month will be construed as a separate violation for each day during that month that mini-flushes lasted more than 50 minutes. The monthly average for any calendar month shall be calculated by summing the duration (in actual minutes) of each mini-flush during that month and dividing by the number of days in that month.

(B)(*1*) No mini-flush shall be conducted at any time unless one of the following operating parameters is satisfied:

(*i*) The flow rate of recirculated phossy water is equal to or less than 1800 gallons per minute; or

(*ii*) The secondary condenser outlet temperature is equal to or greater than 36 degrees Centigrade.

(*2*) The prohibition set for in paragraph (c)(4)(ii)(B) of this section shall not apply during periods of malfunction, provided the owner or operator of the FMC facility provides to EPA written notice of a malfunction within 24 hours of occurrence and takes all reasonable precautions to minimize the duration and extent of emissions during such malfunction. The owner or operator of the FMC facility shall have the burden of proving the existence of a malfunction. The owner or operator of the FMC facility shall maintain properly signed contemporaneous records documenting the date, time, and duration of the malfunction; the probable cause of the malfunction; and any corrective action or preventative measures taken.

(6) At all times, including periods of startup, shutdown, malfunction, or emergency, the owner or operator of the FMC facility shall, to the extent practicable, maintain and operate each source identified in Column II of Table 1 to this section, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Regional Administrator which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

(7) Maintaining operation of a source within approved parameter ranges, promptly taking corrective action, and otherwise following the work practice, monitoring, recordkeeping, and reporting requirements of this section do not relieve the owner or operator of the FMC facility from the obligation to comply with applicable emission limitations and work practice requirements at all times.

Alternative One

(8) An affirmative defense to a penalty action brought for noncompliance with an emission limitation shall be available if the excess emissions were due to startup, shutdown, or scheduled maintenance and all of the following conditions are met:

(i) The owner or operator of the FMC facility notifies EPA in writing of anystartup, shutdown, or scheduled maintenance that is expected to cause excess emissions. The notification shall be given as soon as possible, but no later than 48 hours prior to the start of the startup, shutdown, or scheduled maintenance, unless the owner or operator demonstrates to EPA's satisfaction that a shorter advanced notice was necessary. The notice shall identify the expected date, time, and duration of the excess emissions event, the source involved in the excess emissions event, and the type of excess emissions event.

(ii) The affirmative defense for excess emissions due to startup, shutdown, or scheduled maintenance shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(A) The excess emissions could not have been avoided through careful and prudent planning, design, and operations and maintenance practices.

(B) The source in question and any related control equipment and processes were at all times maintained and operated in a manner consistent with good practices for minimizing emissions.

(C) During the period of the startup, shutdown, or scheduled maintenance, the owner or operator of the FMC facility took all reasonable steps to minimize levels of emissions that exceeded the emission limitations or other requirements of this section.

(D) During the period of the startup, shutdown, or scheduled maintenance, the owner or operator of the FMC facility took all reasonable steps to minimize the impact of the excess emissions on the ambient air.

(E) The owner or operator of the FMC facility submitted notice of the startup, shutdown, or scheduled maintenance to EPA within 48 hours of the time when emission limitations were exceeded due to startup, shutdown, or scheduled maintenance. This notice fulfills the requirement of paragraph (g)(4) of this section. This notice must contain a description of the startup, shutdown, or scheduled maintenance, any steps taken to mitigate emissions, and corrective actions taken.

(iii) No exceedence of the 24-hour PM–10 National Ambient Air Quality Standard, 40 CFR 50.7(a)(2)(1998) was recorded on any monitor located within the Fort Hall PM-10 nonattainment area that regularly reports information to the Aerometric Information Retrieval System-Air Quality Subsystem, as defined under 40 CFR 58.1(p), on any day for which the defense of startup, shutdown, or scheduled maintenance is asserted.

(iv) In any enforcement proceeding, the owner or operator of the FMC facility has the burden of proof on all requirements of this paragraph (c)(8).

Alternative Two

(9) An affirmative defense to a penalty action brought for noncompliance with an emission limitation shall be available if the excess emissions were due to an emergency and all of the following conditions are met:

(i) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(A) An emergency occurred and that the owner or operator of the FMC facility can identify the causes of the emergency.

(B) The FMC facility was at the time being properly operated.

(C) During the period of the emergency the owner or operator of the FMC facility took all reasonable steps to minimize levels of emissions that exceeded the emission limitation or other requirements of this section.

(D) The owner or operator of the FMC facility submitted notice of the emergency to EPA within 48 hours of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of paragraph (g)(4)of this section. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(ii) No exceedence of the 24-hour PM–10 National Ambient Air Quality Standard, 40 CFR 50.7(a)(2)(1998), was recorded on any monitor located within the Fort Hall PM–10 nonattainment area that regularly reports information to the Aerometric Information Retrieval System-Air Quality Subsystem, as defined under 40 CFR 58.1(p), on any day for which the defense of emergency is asserted.

(iii) In any enforcement proceeding, the owner or operator of the FMC facility has the burden of proof on all requirements of this paragraph (c)(9).

(d) *Reference test methods.* (1) For each source identified in Column II of Table 1 to this section, the reference test method for the corresponding emission limitation in Column III of Table 1 to this section for that source is identified in Column IV of Table 1 to this section

(2) When Methods 201/201A and 202 are specified as the reference test methods, the testing shall be conducted in accordance with the identified test methods and the following additional requirements:

(i) Each test shall consist of three runs, with each run a minimum of one hour.

(ii) Method 202 shall be run concurrently with Method 201 or Method 201A.

(iii) The source shall be operated at a capacity of at least 90% of maximum during all tests, unless the Regional Administrator determines in writing that other operating conditions are representative of normal operations.

(iv) Only regular operating staff may adjust the processes or emission control device parameters during a performance test or within two hours prior to the tests. Any operating adjustments made during a performance test, which are a result of consultation during the tests with source testing personnel, equipment vendors, or other consultants may render the source test invalid.

(v) For all reference tests, the sampling site and minimum number of sampling points shall be selected according to EPA Method 1 (40 CFR part 60, appendix A).

(vi) EPA Methods 2, 2C, 2D, 3, 3A, and 4 (40 CFR part 60, appendix A) shall be used, as appropriate, for determining mass emission rates.

(vii) The mass emission rate of PM–10 shall be determined by first adding the PM–10 concentrations from Methods 201/201A and 202, and then multiplying by the average hourly volumetric flow rate for the run. The average of the three required runs shall be compared to the emission standard for purposes of determining compliance.

(viii) Source testing of the Medusa Andersen stacks on the furnace building (sources 18d, 18e, 18f, and 18g) shall be conducted during slag tapping.

(ix) Source testing of the excess CO burner (source 26b) shall be conducted during either a mini-flush or hot-flush.

(3) Method 5 shall be used in place of Method 201 or 201A for the calciner scrubbers (source 9) and any other sources with entrained water drops. In such case, all the particulate matter measured by Method 5 must be counted as PM–10, and the testing shall be conducted in accordance with paragraph (d)(2) of this section.

(4) Method 5 may be used as an alternative to Method 201 or 201A for a particular point source, provided that all of the particulate measured by Method 5 is counted as PM–10 and the testing is conducted in accordance with paragraph (d)(2) of this section.

(5) Method 202 shall not be required for a particular source provided that:

(i) The owner or operator of the FMC facility submits a written request to the Regional Administrator which demonstrates that the contribution of condensible particulate matter to total PM–10 emissions is insignificant for such source; and

(ii) The Regional Administrator approves the request in writing.

(6) For the purpose of submitting compliance certifications or establishing whether or not a person has violated or is in violation of any requirement of this section, nothing in this section shall preclude the use, including the exclusive use, of any credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or reference test or procedure had been performed.

(e) *Monitoring and additional work practice requirements.* (1) The owner or operator of the FMC facility shall conduct a performance test to measure PM–10 emissions from each of the following sources on an annual basis using the specified reference test methods: east shale baghouse (source 5a), middle shale baghouse (source 6a), west shale baghouse (source 7a), calciner scrubbers (source 9), calciner cooler vents (source 10), north nodule discharge baghouse (source 12a), south nodule discharge baghouse (source 12b), proportioning building-east nodule baghouse (source 15a), proportioning building-west nodule baghouse (source 15b), nodule reclaim baghouse (source 16a), dust silo baghouse (source 17a), furnace building-east baghouse (source 18a), furnace building-west baghouse (source 18b), furnace #1, #2, #3 and #4-Medusa Andersen scrubbers (sources 18d, 18e, 18f and 18g), coke handling baghouse (source 20a), phos dock-Andersen scrubber (source 21a), and excess CO burner (source 26b).

(i) The first annual test for each source shall be completed within 12 months of the effective date of this section, except that the first annual test for the calciner scrubbers (source 9), the phos dock Andersen scrubber (source 21a), and the excess CO burner (source 26b) shall be conducted within 60 days after the date on which the PM–10 emission limitations become applicable to those sources. Subsequent annual tests shall be completed within 12 months of the most recent previous test.

(ii) The owner or operator of the FMC facility shall provide the Regional Administrator a proposed test plan at least 30 days in advance of each scheduled source test.

(iii) Concurrently with the performance testing and for at least two hours prior to and two hours following the test, the owner or operator of the FMC facility shall monitor and record the parameters specified in paragraphs (e)(2), (e)(3), (e)(4), and (e)(5) of this section, as appropriate, for the source being tested, and shall report the results to EPA as part of the performance test report referred to in paragraph (g)(3)(i)(E) of this section.

(iv) The owner or operator of the FMC facility shall conduct a 12 minute visible emission observation using Method 9 at least twice during the performance test at an interval of no less than one hour apart, and shall report the results of this observation to EPA as part of the performance test report referred to in paragraph (g)(3)(i)(E) of this section.

(v) Concurrently with the performance testing, the owner or operator of the FMC facility shall measure the flow rate (throughput to the control device) using Method 2 for the calciner scrubbers (source 9) and the phos dock Andersen scrubber (source 21a) and shall report the results to EPA as part of the performance test report referred to in paragraph (g)(3)(i)(E) of this section.

(2) The owner or operator of the FMC facility shall install, calibrate, maintain, and operate in accordance with the manufacturer's specifications a device to continuously measure and continuously record the pressure drop across the baghouse for each of the following sources identified in Column II of Table A: east shale baghouse (source 5a), middle shale baghouse (source 6a), west shale baghouse (source 7a), north nodule discharge baghouse (source 12a), south nodule discharge baghouse (source 12b), proportioning building-east nodule baghouse (source 15a), proportioning building-west nodule baghouse (source 15b), nodule reclaim baghouse (source 16a), dust silo baghouse (source 17a), furnace building-east baghouse (source 18a), furnace building-west baghouse (source 18b), and coke handling baghouse (source 20a).

(i) The devices shall be installed and fully operational no later than 180 days after the effective date of this rule.

(ii) Upon EPA approval of the acceptable range of baghouse pressure drop for each source, as provided in paragraph (g)(1) of this section, the owner or operator of the FMC facility shall maintain and operate the source to stay within the approved range. Until EPA approval of the acceptable range of baghouse pressure drop for each source, the owner or operator of the FMC facility shall maintain and operate the source to stay within the proposed range for that source, as provided in paragraph (g)(1) of this section.

(iii) If an excursion from an approved range occurs, the owner or operator of the FMC facility shall immediately upon discovery, but no later than within three hours of discovery, initiate corrective action to bring source operation back within the approved range.

(iv) The owner or operator of the FMC facility shall complete the corrective action as expeditiously as possible.

(3) The owner or operator of the FMC facility shall install, calibrate, maintain, and operate in accordance with the manufacture's specifications and the bag leak detection guidance a triboelectric monitor to continuously monitor and record the readout of the instrument response for each of the following sources identified in Column II of Table 1 to this section: east shale baghouse (source 5a), middle shale baghouse (source 6a), west shale baghouse (source 7a), north nodule discharge baghouse (source 12a), south nodule discharge baghouse (source 12b), proportioning building-east nodule baghouse (source 15a), proportioning building-west nodule baghouse (source 15b), nodule reclaim baghouse (source 16a), dust silo baghouse (source 17a), furnace building-east baghouse (source 18a), furnace building-west baghouse (source 18b), and coke handling baghouse (source 20a).

(i) The triboelectric monitors shall be installed and fully operational no later than 180 days after the effective date of this rule.

(ii) The owner or operator of the FMC facility shall maintain and operate the source to stay within the approved range. For the triboelectric monitors, the ''approved range'' shall be defined as operating the source so that an ''alarm,'' as defined in and as determined in accordance with the bag leak detection guidance, does not occur.

(iii) If an excursion from an approved range occurs, the owner or operator of the FMC facility shall immediately upon discovery, but no later than within three hours of discovery, initiate corrective action to bring source operation back within the approved range.

(iv) The owner or operator of the FMC facility shall complete the corrective action as expeditiously as possible.

(4) The owner or operator of the FMC facility shall install, calibrate, maintain, and operate in accordance with the manufacturer's specifications, a device to continuously measure and continuously record the pressure drop across the scrubber, the scrubber liquor flowrate, and scrubber liquor pH for each of the following sources identified in Column II of Table 1 to this section: calciner scrubbers (source 9) and furnaces #1, #2, #3 and #4—Medusa Andersen scrubbers (sources 18d, 18e, 18f and 18g). Scrubber liquor pH shall be measured just prior to the point of addition of makeup water and/or caustic addition.

(i) The devices for the calciner scrubbers (source 9) shall be installed and fully operational on or before December 1, 2000. The devices for the Medusa Andersen scrubbers on furnaces ι1, ι2, ι3 and ι4 (sources 18d, 18e, 18f, and 18g) shall be installed and fully operational no later than 180 days after the effective date of this rule.

(ii) Upon EPA approval of the acceptable range of pressure drop, scrubber liquor flow rate, and scrubber liquor pH for each source, as provided in paragraph (g)(1) of this section, the owner or operator of the FMC facility shall maintain and operate the source to stay within the approved range. Until EPA approval of the acceptable ranges for each source, the owner or operator of the FMC facility shall maintain and operate the source to stay within the proposed range for that source, as provided in paragraph (g)(1) of this section.

(iii) If an excursion from an approved range occurs, FMC shall immediately upon discovery, but no later than within three hours of discovery, initiate corrective action to bring source operation back within the approved range.

(iv) The owner or operator of the FMC facility shall complete the corrective action as expeditiously as possible.

(5) The owner or operator of the FMC facility shall install, calibrate, maintain, and operate in accordance with the manufacturer's specifications, a device to continuously measure and continuously record the pressure drop across the scrubber for each of the following sources identified in Column II of Table 1 to this section: phos dock Andersen scrubber (source 21a) and excess CO burner (source 26b).

(i) The device for the phos dock Andersen scrubber (source 21a) shall be installed and fully operational on or before November 1, 1999. The device for the excess CO burner (source 26b) shall be installed and fully operational no later than January 1, 2001.

(ii) Upon EPA approval of the acceptable range of scrubber pressure drop for each source, as provided in paragraph (g)(1) of this section, the owner or operator of the FMC facility shall maintain and operate the source to stay within the approved range. Until EPA approval of the acceptable ranges of scrubber pressure drop for each source, the owner or operator of the FMC facility shall maintain and operate the source to stay within the proposed range for that source, as provided in paragraph (g)(1) of this section.

(iii) If an excursion from an approved range occurs, the owner or operator of the FMC facility shall immediately upon discovery, but no later than within three hours of discovery, initiate corrective action to bring source operation back within the approved range.

(iv) The owner or operator of the FMC facility shall complete the corrective action as expeditiously as possible.

(6) For each of the pressure relief vents on the furnaces (source 24), FMC shall install, calibrate, maintain, and operate in accordance with the manufacturer's specifications, a device to continuously measure and

continuously record the temperature of gases in the relief vent downstream of the pressure relief valve.

(i) The devices shall be installed and fully operational no later than 60 days after the effective date of this rule.

(ii) A ''pressure release'' is defined as an excursion of the temperature above the temperature range approved in accordance with paragraph (g)(1) of this section. Until EPA approval of the acceptable range of temperature for the pressure release vents, a ''pressure release'' is defined as an excursion of the temperature above the range proposed by the owner or operator of the FMC facility for the pressure relief vents, as provided in paragraph (g)(1) below.

(iii) The release point on each pressure relief vent shall be maintained at no less than 18 inches of water.

(iv) When a pressure release through a pressure relief vent is detected, the owner or operator of the FMC facility shall, within 30 minutes of the beginning of the pressure release, inspect the pressure relief valve to ensure that it has properly sealed and verify that at least 18 inches of water seal pressure is maintained. The owner or operator of the FMC facility shall then immediately conduct a visual observation to determine compliance with the applicable emission limitation set forth in Table 1 to this section.

(v) If any visible emissions are detected for any period of time during the observation period of the visual observation referenced in paragraph (e)(6)(iv) of this section, the valve shall be manually resealed or repaired as necessary within three hours of the visual observation, and another ten minute visual observation shall be conducted. The owner or operator of the FMC facility shall repeat corrective action, manually resealing or repairing the valve as necessary, until no visible emissions are observed for any period of time during the required ten minute visual observation.

(7) The owner or operator of the FMC facility shall develop and implement a written operations and maintenance (O&M) plan covering each source identified in Column II of Table 1 to this section, including uncaptured fugitive and general fugitive emissions of PM–10 from each source.

(i) The purpose of the O&M plan is to ensure each source at the FMC facility will be operated and maintained consistent with good air pollution control practices and procedures for maximizing control efficiency and minimizing emissions at all times, including periods of startup, shutdown, and emergency, and to establish procedures for assuring continuous compliance with the emission limitations, work practice requirements, and other requirements of this section.

(ii) The O&M plan shall be submitted to the Regional Administrator within 60 days of the effective date of this rule and shall cover all sources and requirements for which compliance is required 60 days after the effective date of this rule.

(A) A revision to the O&M plan covering each source or requirement with a compliance date of more than 60 days after the effective date of this rule shall be submitted at least 60 days before the source is required to comply with the requirement.

(B) The owner or operator of the FMC facility shall review and, as appropriate, update the O&M plan at least annually.

(C) The Regional Administrator may require the owner or operator of the FMC facility to modify the plan if, at any time, the Regional Administrator determines that the O&M plan does not:

(*1*) Adequately ensure that each source at the FMC facility will be operated and maintained consistent with good air pollution control practices and procedures for maximizing control efficiency and minimizing emissions at all times;

(*2*) Contain adequate procedures for assuring continuous compliance with the emission limitations, work practice requirements, and other requirements of this section;

(*3*) Adequately address the topics identified in this paragraph (e)(7); or

(*4*) Include sufficient mechanisms for ensuring that the O&M plan is being implemented.

(iii) The O&M plan shall address at least the following topics:

(A) Procedures for minimizing fugitive PM–10 emissions from material handling, storage piles, roads, staging areas, parking lots, mechanical processes, and other processes, including but not limited to:

(*1*) A visual inspection of all material handling, storage piles, roads, staging areas, parking lots, mechanical processes, and other processes at least once each week at a regularly scheduled time. The O&M plan shall include a list of equipment, operations, and storage piles, and what to look for at each source during this regularly scheduled inspection.

(*2*) A requirement to document the time, date, and results of each visual inspection, including any problems identified and any corrective actions taken.

(*3*) A requirement to take corrective action as soon as possible but no later than within 48 hours of identification of operations or maintenance problems identified during the visual inspection (unless a shorter time frame is specified by this rule or is warranted by the nature of the problem).

(*4*) Procedures for the application of dust suppressants to and the sweeping of material from storage piles, roads, staging areas, parking lots, or any open area as appropriate to maintain compliance with applicable emission limitations or work practice requirements. Such procedures shall include the specification of dust suppressants, the application rate, and application frequency, and the frequency of sweeping. Such procedures shall also include the procedures for application of latex to the main shale pile (source 2) and the emergency/contingency raw ore shale pile (source 3) after each reforming of the pile or portion of the pile.

(B) Specifications for parts or elements of control or process equipment needing replacement after some set interval prior to breakdown or malfunction.

(C) Process conditions that indicate need for repair, maintenance or cleaning of control or process equipment, such as the need to open furnace access ports or holes.

(D) Procedures for the visual inspection of all baghouses, scrubbers, and other control equipment of at least once each week at a regularly scheduled time.

(E) Procedures for the regular maintenance of control equipment, including without limitation, procedures for the rapid identification and replacement of broken or ripped bags for all sources controlled by a baghouse, bag dimensions, bag fabric, air-to-cloth ratio, bag cleaning methods, cleaning type, bag spacing, compartment design, bag replacement schedule, and typical exhaust gas volume.

(F) Procedures that meet or exceed the manufacturer's recommendations for the inspection, maintenance, operation, and calibration of each monitoring device required by this rule.

(G) Procedures for the rapid identification and repair of equipment or processes causing a malfunction or emergency and for reducing or minimizing the duration of and emissions resulting from any malfunction or emergency.

(H) Procedures for the training of staff in the above procedures.

(8) For each of the following sources identified in Column II of Table 1 to this section, the owner or operator of the FMC facility shall conduct a visual observation of each source at least once each week at a regularly scheduled time:

railcar unloading (source 1), main shale pile (source 2), emergency/contingency raw ore shale pile (source 3), stacker and reclaimer (source 4), east shale baghouse building—fugitives (source 5b), middle shale baghouse building—fugitives (source 6b), west shale baghouse building—fugitives (source 7b), recycle material pile (source 8b), proportioning building—fugitives (source 15c), dust silo fugitives and pneumatic dust handling system (source 17b), briquetting building (source 19), coke unloading building (source 20b), pressure relief vents (source 24), and furnace CO emergency flares (source 25).

(i) The owner or operator of the FMC facility shall immediately, but no later than within 24 hours of discovery, take corrective action if any visible emissions are observed for any period of time during the observation period. Immediately upon completion of the corrective action, the owner or operator of the FMC facility shall conduct another visual observation. This process shall be repeated until no visible emissions are observed for any period of time during the observation period.

(ii) Should, for good cause, the visible emissions reading not be conducted on schedule, the owner or operator of the FMC facility shall record the reason observations were not conducted. Visible emissions observations shall be conducted immediately upon the return of conditions suitable for visible emissions observations.

(iii) If, after conducting weekly visible emissions observations for a given source for more than one year and detecting no visible emissions from that source for 52 consecutive weeks, the frequency of observations may be reduced to monthly. The frequency of observations for such source shall revert to weekly if visible emissions are detected from that source during any monthly observation or at any other time.

(9) For each following sources identified in Column II of Table 1 to this section, the owner or operator of the FMC facility shall conduct a visual observation of each source at least once each week at a regularly scheduled time: east shale baghouse (source 5a), middle shale baghouse (source 6a), middle shale baghouse outside capture hood-fugitives (source 6c), west shale baghouse (source 7a), west shale baghouse outside capture hood-fugitives (source 7c), slag pit area and pot rooms (source 8a), calciner cooler vents (source 10), nodule pile (source 11), north nodule discharge baghouse (source 12a), south nodule discharge baghouse (source 12b), north and south nodule discharge baghouse outside capture hood-fugitives (source 12c), nodule fines pile (source 13), screened shale fines pile (source 14), proportioning building-east nodule baghouse (source 15a), proportioning building-west nodule baghouse (source 15b), nodule reclaim baghouse (source 16a), nodule reclaim baghouse outside capture hoods-fugitives (source 16b), dust silo baghouse (source 17a), furnace building-east baghouse (source 18a), furnace building-west baghouse (source 18b), furnace building (source 18c), furnace #1, #2, #3 and #4-Medusa Andersen scrubbers (sources 18d, 18e, 18f and 18g), coke handling baghouse (source 20a), phos dock Andersen scrubber (source 21a), phos dock fugitives (source 21b), roads (source 22), boilers (source 23), and excess CO burner (source 26b).

(i) If visible emissions are detected, the owner or operator of the FMC facility shall immediately, but no later than within 24 hours of discovery, determine if corrective action is needed to reduce visible emissions and ensure proper operations and maintenance of the source and, if so, take corrective action. Immediately upon completion of any corrective action, a certified observer shall conduct a visible emissions observation of the source using Method 9 with an observation duration of at least 12 minutes. If opacity exceeds allowable levels, the owner or operator of the FMC facility shall take prompt corrective action. This process shall be repeated until opacity returns to allowable levels.

(ii) In lieu of a visual observation under this paragraph (e)(9), the owner or operator of the FMC facility may conduct a visible emissions observation of any source subject to the requirements of this paragraph using EPA Method 9 and a certified reader, in which case corrective action must be taken only if opacity exceeds allowable levels.

(iii) Should, for good cause, the visible emissions reading not be conducted on schedule, the owner or operator of the FMC facility shall record the reason observations were not conducted. Visible emissions observations shall be conducted immediately upon the return of conditions suitable for visible emissions observations.

(iv) If, after conducting weekly visible emissions observations for a given source for more than one year and detecting no visible emissions from that source for 52 consecutive weeks, the frequency of observations may be reduced to monthly. The frequency of observations for such source shall revert to weekly if visible emissions are detected from that source during any monthly observation or at any other time.

(10) A representative sample of the main shale pile (source 2) and the emergency/contingency raw ore shale pile (source 3) shall be analyzed for moisture content using ASTM Standard D 2216–92 at least once each month.

(i) Such sample shall be taken from the surface of the pile.

(ii) The owner or operator of the FMC facility shall submit a sampling plan to the Regional Administrator for review and approval at least 30 days prior to any sampling that is conducted to meet this requirement.

(iii) Upon EPA approval of the plan, any subsequent sampling must adhere to the plan.

(iv) Any modification to the sampling plan must be submitted to the Regional Administrator for review and approval 60 days prior to the intended use of the modified plan.

(11) Except for, as applicable, monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero span adjustments), the owner or operator of the FMC facility shall conduct all monitoring with the monitoring devices required by paragraphs (e)(2), (e)(3), (e)(4), (e)(5), and (e)(6) of this section in continuous operation at all times that the monitored process is in operation. Data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities shall not be used for purposes of this section, including data averages and calculations, or fulfilling a minimum data availability requirement. The owner or operator of the FMC facility shall use data collected during all other periods in assessing the operation of the control device and associated control system.

(12) The minimum data availability requirement for monitoring data pursuant to paragraphs (e)(2), (e)(3), (e)(4), (e)(5), and (e)(6) of this section is 90% on a monthly average basis. Data availability is determined by dividing the time (or number of data points) representing valid data by the time (or number of data points) that the monitored process is in operation.

(13) Nothing in this paragraph shall preclude EPA from requiring any other testing or monitoring pursuant to section 114 of the Clean Air Act.

(f) Recordkeeping requirements. (1) The owner or operator of the FMC facility shall keep records of all monitoring required by this section that

include, at a minimum, the following information:

(i) The date, place as defined in this section, and time of the sampling or measurement.

(ii) The dates the analysis were preformed.

(iii) The company or entity that performed the analysis.

(iv) The analytical techniques or methods used.

(v) The results of the analyses.

(vi) The operating conditions existing at the time of the sampling or measurement.

(2)(i) The owner or operator of the FMC facility shall keep records of all inspections and all visible emissions observations required by this section or conducted pursuant to the O&M plan, which records shall include the following:

(A) The date, place, and time of the inspection or observation.

(B) The name and title of the person conducting the inspection or observation.

(C) In the case of a visible emission observation, the test method (Method 9 or visual observation), the relevant or specified meteorological conditions, and the results of the observation, including raw data and calculations.

(D) For any corrective action required by this section or the O&M plan or taken in response to a problem identified during an inspection or visible emissions observation required by this section or the O&M plan, the time and date corrective action was initiated and completed and the nature of corrective action taken.

(E) The reason for any monitoring not conducted on schedule.

(ii) With respect to control devices, this requirement is satisfied by meeting the requirements of paragraph (f)(11) of this section.

(3) The owner or operator of the FMC facility shall continuously record the parameters specified in paragraphs (e)(2), (e)(3), (e)(4), (e)(5), and (e)(6) of this section.

(4) The owner or operator of the FMC facility shall keep records of all excursions from ranges approved under paragraphs (e)(3) of this section or (g)(1) of this section, including without limitation, the measured excursion, time and date of the excursion, duration of the excursion, time and date corrective action was initiated and completed, and nature of corrective action taken.

(5) The owner or operator of the FMC facility shall keep records of the time, date, and duration of each pressure release from a furnace pressure relief vent (source 24), the method of detecting the release, the results of the inspection required by paragraph (e)(6) of this section, and any actions taken to ensure resealing, including the time and date of such actions.

(6) The owner or operator of the FMC facility shall keep records of the time, date, and duration of each flaring of the emergency CO flares (source 25) due to an emergency, the method of detecting the emergency, and all corrective action taken in response to the emergency.

(7) Until January 1, 2001, the owner or operator of the FMC facility shall keep records of the date and start/stop time of each mini-flush; the phossy water flow rate and outlet temperature immediately preceding the start time; whether the operating parameters for conducting the mini-flush set forth in paragraph (c)(5)(ii) of this section were met; and, if the parameters were not met, whether the failure to comply with the parameters was attributable to a ''malfunction.''

(8) The owner or operator of the FMC facility shall keep records of the application of dust suppressants to all storage piles, roads, staging areas, parking lots, and any other area, including the identification of the surface covered, type of dust suppressant used, the application rate (gallons per square foot), and date of application.

(9) The owner or operator of the FMC facility shall keep records of the frequency of sweeping of all roads, staging areas, parking lots, and any other area, including the identification of the surface swept and date and duration of sweeping.

(10)(i) The owner or operator of the FMC facility shall keep the following records with respect to the main shale pile (source 2) and emergency/contingency raw ore shale pile (source 3):

(A) The date and time of each reforming of the pile or portion of the pile.

(B) The date, time, and quantity of latex applied.

(C) Each moisture content analysis performed on material from the pile.

(ii) The information to be contained in this record shall be identified in the sampling plan required under paragraph (e)(10) of this section.

(11) The owner or operator of the FMC facility shall keep a log for each control device of all inspections of and maintenance on the control device, including without limitation the following information:

(i) The date, place, and time of the inspection or maintenance activity.

(ii) The name and title of the person conducting the inspection or maintenance activity.

(iii) The condition of the control device at the time.

(iv) For any corrective action required by this section or the O&M plan or taken in response to a problem identified during an inspection required by this section or the O&M plan, the time and date corrective action was initiated and completed, and the nature of corrective action taken.

(v) A description of, reason for, and the date of all maintenance activities, including without limitation any bag replacements.

(vi) The reason any monitoring was not conducted on schedule, including a description of any monitoring malfunction, and the reason any required data was not collected.

(12) The owner or operator of the FMC facility shall keep the following records:

(i) The Method 9 initial certification and recertification for all individuals conducting visual emissions observations using Method 9 as required by this section.

(ii) Evidence that all individuals conducting visual observations as required by this section meet the training guidelines described in section 1 of Method 22, 40 CFR part 60, appendix A.

(13) The owner or operator of the FMC facility shall keep records on the type and quantity of fuel used in the boilers (source 23), including without limitation the date of any change in the type of fuel used.

(14) The owner or operator of the FMC facility shall keep a copy of all reports required to be submitted to EPA under paragraph (g) of this section.

(15) All records required to be maintained by this section and records of all required monitoring data and support information shall be maintained on site at the FMC facility in a readily accessible location for a period of at least five years from the date of the monitoring sample, measurement, report, or record.

(i) Such records shall be made available to EPA on request.

(ii) Support information includes all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation.

(g) *Reporting requirements.* (1) The owner or operator of the FMC facility shall submit to EPA, for each of the operating parameters required to be continuously monitored pursuant to paragraphs (e)(2), (e)(4), (e)(5), and (e)(6) of this section, a proposed range of operation, including a proposed averaging period, and documentation demonstrating that operating the source within the proposed range will assure

compliance with applicable emission limitations and work practice requirements of this section.

(i) The proposed parameter ranges shall be submitted within 180 days of the effective date of this rule for all sources except as follows:

(A) A proposed parameter range for the pressure relief vents (source 24) shall be submitted within 60 days of the effective date of this rule.

(B) Proposed parameter ranges for the calciner scrubbers (source 9), the phos dock Andersen scrubber (source 21a), and the excess CO burner (source 26b) shall be submitted no later than the date by which the emission limitations become applicable to those sources under this section.

(ii) A parameter range for each source shall be approved by EPA through the issuance of a title V operating permit to the FMC facility, or as a modification thereto. Until EPA approval of the acceptable range for a parameter for a source, the owner or operator of the FMC facility shall maintain and operate the source to stay within the proposed range for that source.

(iii) If EPA determines at any time that the proposed or approved range does not adequately assure compliance with applicable emission limitations and work practice requirements, EPA may request additional information, request that revised parameter ranges and supporting documentation be submitted to EPA for approval, or establish alternative approved parameter ranges through the issuance of a title V operating permit to the FMC facility, or as a modification thereto.

(iv) This requirement to submit proposed parameter ranges is in addition to and separate from any requirement to develop parameter ranges under 40 CFR part 64 (Compliance Assurance Monitoring rule). However, monitoring for any pollutant specific source that meets the design criteria of 40 CFR 64.3 and the submittal requirements of 40 CFR 64.4 may be submitted to meet the requirements of this paragraph (g)(1).

(2) The owner or operator of FMC shall submit to EPA a bi-monthly report covering the preceding two calendar months (*e.g.*, January-February, March-April). Such report shall be submitted 15 days after the end of each two month period, with the last such report covering the period of November and December 2000. The report shall include the following:

(i) The date and start/stop time of each mini-flush; the phossy water flow rate and outlet temperature immediately preceding the start time; and a ''Yes/No'' column indicating whether the operating parameters for conducting the mini-flush set forth in paragraph (c)(5)(ii) of this section were met.

(ii) For any ''No'' entry, an indication of whether the failure to comply with the parameters was attributable to a malfunction and, if so, the date and time of notification to EPA of the malfunction and a copy of the contemporaneous record described in paragraph (c)(5)(ii) of this section.

(iii) For each month, the total mini-flush time in minutes, the number of operating days for the secondary condenser, and the average minutes per operating day.

(3) The owner or operator of the FMC facility shall submit to EPA a semiannual report of all monitoring required by this section covering the six month period from January 1 through June 30 and July 1 through December 31 of each year. Such report shall be submitted 30 days after the end of such six month period.

(i) The semiannual report shall:

(A) Identify each time period (including the date, time, and duration) during which a visible emissions observation or PM–10 emissions measurement exceeded the applicable emission limitation and state what actions were taken to address the exceedence. If no action was taken, the report shall state the reason that no action was taken.

(B) Identify each time period (including the date, time, and duration) during which there was an excursion of a monitored parameter from the approved range and state what actions were taken to address the excursion. If no action was taken, the report shall state the reason that no action was taken.

(C) Identify each time period (including date, time and duration) of each flaring of the emergency CO flares (source 25) due to an emergency and state what actions were taken to address the emergency. If no action was taken, the report shall state the reason that no action was taken.

(D) Include a summary of all monitoring required under this section.

(E) Include a written report of the results of each performance test conducted in accordance with paragraph (e)(1) of this section.

(F) Describe the status of compliance with this section for the period covered by the semi-annual report, the methods or other means used for determining the compliance status, and whether such methods or means provide continuous or intermittent data.

(*1*) Such methods or other means shall include, at a minimum, the monitoring, recordkeeping, and reporting required by this section.

(*2*) If necessary, the owner or operator of FMC shall also identify any other material information that must be included in the report to comply with section 113(c)(2) of the Clean Air Act, which prohibits making a knowing false certification or omitting material information.

(*3*) The determination of compliance shall also take into account any excursions from the required parameter ranges reported pursuant to paragraph (g)(3)(i)(B) of this section.

(ii) Each semi-annual report submitted pursuant to this paragraph shall contain certification by a responsible official, as defined in 40 CFR 71.2, of truth, accuracy and completeness. Such certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the documents are true, accurate, and complete.

(4) The owner or operator of the FMC facility shall notify EPA by telephone or facsimile within 48 hours of the beginning of each flaring of the emergency CO flares (source 25) due to an emergency.

(5)(i) For emissions that continue for more than two hours in excess of the applicable emissions limitation, the owner or operator of the FMC facility shall notify EPA by telephone or facsimile within 48 hours. A written report containing the following information shall be submitted to EPA within ten working days of the occurrence of the excess emissions:

(A) The identity of the stack and/or other source where excess emissions occurred.

(B) The magnitude of the excess emissions expressed in the units of the applicable emissions limitation and the operating data and calculations used in determining the magnitude of the excess emissions.

(C) The time and duration or expected duration of the excess emissions.

(D) The identity of the equipment causing the excess emissions.

(E) The nature and probable cause of such excess emissions.

(F) Any corrective action or preventative measures taken.

(G) The steps taken or being taken to limit excess emissions.

(g)(5)(ii) If alternative one or two for paragraph (c)(8) of this section is addopted

(iii) Compliance with this paragraph is required even in cases where the owner or operator of the FMC facility does not seek to establish an affirmative defense of startup, shutdown, scheduled

maintenance, or emergency under paragraphs (c)(8) or (c)(9) of this section.

(6) The owner or operator of FMC shall notify EPA if it uses any fuel other than natural gas in the boilers (source 23) within 24 hours of commencing use of such other fuel.

(7) All reports and notices submitted under this section shall be submitted to EPA at the addresses set forth below:

U.S. Environmental Protection Agency, Region 10, State and Tribal Programs Unit, Office of Air Quality, OAQ 107, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–1189, Fax: 206–553–0404.

(h) *Title V permit.* Additional monitoring, work practice, recordkeeping, and reporting requirements may be included in the title V permit for the FMC facility to assure compliance with the requirements of this section.

(i) *Compliance schedule.* Except as otherwise provided in this section, the owner or operator of the FMC facility shall comply with the requirements of this section within 60 days of the effective date of this section.

TABLE.—1 TO § 52.676

I Source number	II Source description	III Emission limitations and work practice requirements	IV Reference test method
1	Railcar unloading of shale (ore) into underground hopper.	There shall be no visible fugitive emissions as a result of railcar unloading of shale.	Visual observation.
2	Main shale pile (portion located on Fort Hall Indian Reservation).	There shall be no visible fugitive emissions	Visual observation.
		Moisture content of shale shall be at least 11%.	ASTM D2216–92.
		Latex shall be applied after each reforming of pile or portion of pile.	
3	Emergency/ contingency raw ore shale pile.	There shall be no visible fugitive emissions	Visual observation.
		Moisture content of shale shall be at least 11%.	ASTM D2216–92.
		Latex shall be applied after each reforming of pile or portion of pile.	
4	Stacker and reclaimer	There shall be no visible fugitive emissions	Visual observation.
5a	East shale baghouse	a. Emissions shall not exceed 0.10 lb. PM10/hr.	a. Methods 201/201A and 202.
		Opacity shall not exceed 7% over a 6 minute average.	Method 9.
5b	East shale baghouse building	b. There shall be no visible fugitive emissions from any portion of the building.	b. Visual observation
6a	Middle shale baghouse	a. Emissions shall not exceed 0.60 bl. PM10/hr.	a. Methods 201/201A and 202.
		Opacity shall not exceed 7% over a 6 minute average.	Method 9.
6b	Middle shale baghouse building	b. There shall be no visible fugitive emissions from any portion of the building.	b. Visual observation.
6c	MIddle shale baghouse outside capture hood—fugitive emissions.	c. Opacity shall not exceed 10% over a 6 minute average.	c. Method 9.
7a	West shale baghouse	a. Emissions shall not exceed 0.20 lb. PM 10/hr.	a. Methods 201/201A and 202.
		Opacity shall not exceed 7% over a 6 minute average.	Method 9.
7b.	West shale baghouse building	b. There shall be no visible fugitive emissions from any portion of the building.	b. Visual observation.
7c.	West shale baghouse outside capture hood—fugitive emissions.	c. Opacity shall not exceed 10% over a 6 minute average.	c. Method 9.
8a	a. Slag handling: slag pit area and pot rooms.	a. Until November 1, 2000, emissions from the slag pit area and the pot rooms shall be exempt from opacity limitations.	
		Effective November 1, 2000, opacity of emissions in the slag pit area and from pot rooms shall not exceed 5% over a 6 minute average. *Exemption:* Fuming of molten slag in transport pots during transport are exempt provided the pots remain in the pot room for at least 3 minutes after the flow of molten slag to the pots has ceased.	Method 9.
		See also 40 CFR 52.676(c)(4)	
8b	b. Recycle material pile	b. There shall be no visible fugitive emissions.	v. Visual observation.
8c	c. Dump to slag pile	c. Fuming of molten slag during dump to slag pile shall be exempt from opacity limitations.	

TABLE.—1 TO § 52.676—Continued

I Source number	II Source description	III Emission limitations and work practice requirements	IV Reference test method
9	Calciner scrubbers	Effective December 1, 2000, emissions from any one calciner scrubber exhaust stack shall not exceed 0.005 grains per dry standard cubic foot PM10.	Methods 5 (all counted PM10) and 202.
		Flow rate (throughput to the control device) shall not exceed manufacturer's design specification.	Method 2.
		The calciner scrubbers shall be exempt from opacity limitations.	
10	Calciner cooler vents	Emissions from any one calciner cooler vent shall not exceed 2.0 lb. PM10/hr.	Methods 201/201A and 202.
		Opacity shall not exceed 5% over a 6 minute average.	Method 9.
11	Nodule pile	Opacity shall not exceed 10% over a 6 minute average.	Method 9.
12a	North nodule discharge baghouse	a. Emissions shall not exceed 2.7 lb. PM 10/hr.	a. Methods 201/201A and 202.
		Opacity shall not exceed 7% over a 6 minute average.	Method 9.
12b	South nodule discharge baghouse	b. Emissions shall not exceed 2.7 lb. PM10/hr.	b. Methods 201/201A and 202.
		Opacity shall not exceed 7% over a 6 minute average.	Method 9.
12c	North and south nodule discharge baghouse outside capture hood— fugitive emissions.	Opacity shall not exceed 10% over a 6 minute average.	c. Method 9.
13	Nodule fines pile	Opacity shall not exceed 10% over a 6 minute average.	Method 9.
14	Screened shale fines pile adjacent to the West shale building.	Opacity shall not exceed 10% over a 6 minute average.	Method 9.
	Proportioning building		
15a	a. East nodule baghouse	a. Emissions shall not exceed 2.0 lb. PM10/hr.	a. Methods 201/201A and 202.
		Opacity shall not exceed 7% over a 6 minute average.	Method 9.
15b	b. West nodule baghouse	b. Emissions shall not exceed 1.6 lb. PM10 /hr.	b Methods 201/201A and 202.
		Opacity shall not exceed 7% over a 6 minute average.	Method 9.
15c	c. Proportioning building—fugitive emissions.	c. There shall be no visible fugitive emissions from any portion of the building.	c. Visual observation.
16a	Nodule reclaim baghouse	a. Emissions shall not exceed 0.9 lb. PM10/hr.	a. Methods 201/201A and 202.
		Opacity shall not exceed 7% over a 6 minute average.	Method 9.
16b	Nodule reclaim baghouse outside capture hood— fugitive emissions.	b. Opacity shall not exceed 10% over a 6 minute average.	b. Method 9.
17a	Dust silo baghouse	a. Emissions shall not exceed 3.3 lb. PM10/hr.	a. Methods 201/201A and 202.
		Opacity shall not exceed 7% over a 6 minute average.	Method 9.
17b	Dust silo fugitive emissions and pneumatic dust handling system.	b. There shall be no fugitive emissions from any portion of the dust silo or pneumatic dust handling system.	b. Visual observation.
	Furnace building		
18a	a. East baghouse	a. Emissions shall not exceed 1.5 lb. PM10/hr.	a. Methods 201/201A and 202.
		Opacity shall not exceed 7% over a 6 minute average.	Method 9.
18b	b. West baghouse	b. Emissions shall not exceed 1.2 lb. PM10/hr.	b. Methods 201/201A and 202.
		Opacity shall not exceed 7% over a 6 minute average.	Method 9.
18c	c. Furnace building; any emission point except 18a, 18b, 18d, 18e, 18f, or 18g.	c. Until April 1, 2002, opacity shall not exceed 20% over a 6 minute average.	c. Method 9.
		Effective April 1, 2002, opacity shall not exceed 5% over a 6 minute average.	Method 9.
18d	d. Furnace #1 Medusa Andersen	d,e,f,g: PM–10 emissions from any one Medusa.	d,e,f,g: Methods 201/201A and 202.
18e	e. Furnace #2 Medusa Andersen	Andersen shall not exceed 4.8 lb/hr.	

TABLE.—1 TO § 52.676—Continued

I Source number	II Source description	III Emission limitations and work practice requirements	IV Reference test method
18f	f. Furnace #3 Medusa Andersen	Opacity from any one Medusa Andersen shall not exceed 5% over a 6 minute average.	Method 9.
18g	g. Furnace #4 Medusa Anderson		
19	Briquetting building	There shall be no visible fugitive emissions from any portion of the building.	Visual observation.
20a	a. Coke handling baghouse	a. Emissions shall not exceed 1.7 lb. PM10/hr.	a. Methods 201/201A and 202.
		Opacity shall not exceed 7% over a 6 minute average.	Method 9.
20b	b. Coke unloading building	b. There shall be no visible fugitive emissions from any portion of the coke unloading building.	b.Visual observation.
21a	a. Phosphorous loading dock (phos dock), Andersen Scrubber.	a. Effective November 1, 1999, emissions shall not exceed 0.007 grains per dry standard cubic foot PM10.	a. Methods 201/201A and 202.
		Effective November 1, 1999, flow rate (throughput to the control device) shall not exceed manufacturer's design specificatio.	Method 2.
		Effective November 1, 1999, opacity shall not exceed 5% over a 6 minute average.	Method 9.
21b.	b. Phosphorous loading dock—fugitive emissions..	b. Effective November 1, 1999, opacity shall not exceed 10% over a 6 minute average.	b. Method 9.
22	All roads	Opacity shall not exceed 10% over a 6 minute average.	Method 9.
23	Boilers	Emissions from any one boiler shall not exceed 0.09 lb. PM10/hr.	Methods 201/201A and 202.
		Opacity from any one boiler shall not exceed 5% over a 6 minute average.	Method 9.
24	Pressure relief vents	There shall be no visible fugitive emissions at any time except during a pressure release, as defined in 40 CFR 52.676(e)(6).	Visual observation.
		Pressure release point shall be maintained at 18 inches of water pressure at all times.	Inspection of pressure release vent.
		Emissions during a pressure release, as defined in 40 CFR 52.676(e)(6)(ii) are exempt from opacity limitations.	
25	Furnace CO emergency flares	There shall be no fugitive emissions at any time except during an emergency flaring caused by an emergency as defined in 40 CFR 52.626(b).	Visual observation.
		Emissions during an emergency flaring caused by an emergency are exempt from opacity limitations.	
26a.	a. Elevated secondary condenser flare and ground flare.	a. *See* 40 CFR 52.676(c)(5).	
26b	b. Excess CO burner (to be built to replace the elevated secondary condenser flare and ground flare).	b. Effective January 1, 2001, total emissions from all vents/stacks from control devices on this source shall not exceed 6.5 lb. PM10/hr.	b. Methods 201/201A and 202.
		Effective January 1, 2001,opacity shall not exceed 5% over a 6 minute average.	Method 9.

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federal register

Friday
February 12, 1999

Part V

Department of Agriculture

Farm Service Agency
Rural Housing Service
Rural Business-Cooperative Service
Rural Utilities Service

7 CFR Parts 762 and 1980

Implementation of Preferred Lender Program and Streamlining of Guaranteed Loan Regulations; Final Rule

Eligibility Criteria for Certified and Preferred Lenders; Notice

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 762

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1980

RIN 0560–AF38

Implementation of Preferred Lender Program and Streamlining of Guaranteed Loan Regulations

AGENCY: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Final rule and request for comments.

SUMMARY: This action amends the regulations governing the Farm Service Agency's (FSA) guaranteed farm loan programs. It clarifies, simplifies, and streamlines the procedures to apply for, make, and service FSA guaranteed loans. This action also establishes the Preferred Lender Program.

This action also provides for an Interest Assistance Program to replace the former interest rate buydown program (IRBD). The intended effect of this rule is to clarify and simplify the rules, and to finalize the interim rule which implemented the provisions of the Omnibus Budget Reconciliation Act of 1990. As contained in the final rule, FSA grants interest assistance at a 4 percent subsidy rate in all situations that qualify for interest assistance. FSA is requesting comments on alternative methods of determining the amount of subsidy paid, including granting interest assistance at incremental rates based upon the borrower's needs.

FSA is also incorporating changes mandated by Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 1999, (1999 Act), signed on October 21, 1998.

DATES: This regulation is effective on February 12, 1999. Comments on the alternative interest assistance subsidy rate calculation must be received on or before April 13, 1999.

ADDRESSES: Submit written comments to the Farm Service Agency, U.S. Department of Agriculture, Farm Loan Programs Loan Making Division, Attention: Director, Room 5438–S, 1400 Independence Avenue, SW, STOP 0522, Washington, DC 20250–0522. All written comments received in connection with this rule will be available for public inspection 8:15 am—4:45 pm, Washington, DC time, except holidays, at 1400 Independence Avenue, SW, Washington, DC 20250–0522.

FOR FURTHER INFORMATION CONTACT: Steven K. Ford, Senior Loan Officer, Farm Service Agency; telephone: 202–720–3889; Facsimile: 202–690–1117; E-mail: sford@wdc.fsa.usda.gov

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

This rule substantially streamlines FSA's procedures implementing the guaranteed loan program. By making FSA's guaranteed loan program more consistent with standard practices used within the lending industry, use by lenders will be simplified and they will be more willing to use the program. This will increase the availability of commercial credit for family size farmers.

FSA currently guarantees repayment on approximately 65,000 farm loans to 40,000 farmers. Each year, FSA receives 15,000 requests for new loans. By reducing the application burden on lenders, and making FSA rules more consistent with industry practices, we expect lenders will increase requests for loan guarantees by 25 percent, or an additional $395 million. This means an additional 3,000 farmers will be able to receive commercial credit. These farmers would otherwise have gone without credit or required assistance through FSA's direct loan programs.

Regulatory Flexibility Act

The Agency certifies that this rule will not have a significant economic effect on a substantial number of small entities and therefore is not required to perform a Regulatory Flexibility Analysis as required by the Regulatory Flexibility Act, Pub. L. 96–534, as amended (5 U.S.C. 601). An insignificant number of guaranteed loan borrowers and no lenders are small entities. This rule does not impact the small entities to a greater extent than large entities.

Environmental Impact Statement

It is the determination of FSA that this action is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, and 7 CFR part 1940, subpart G, an Environmental Impact Statement is not required.

Executive Order 12988

This rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. In accordance with that Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except that Agency servicing under this rule will apply to loans guaranteed prior to the effective date of the rule; and (3) administrative proceedings in accordance with 7 CFR parts 11 and 780 must be exhausted before requesting judicial review.

Executive Order 12372

For reasons set forth in the Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) the programs and activities within this rule are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with state and local officials.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub.L. 104–4, requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit assessment, for proposed and final rules with ''Federal mandates'' that may result in expenditures of $100 million or more in any 1 year for state, local, or tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule.

The rule contains no Federal mandates, as defined by title II of the UMRA, for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

The amendments to 7 CFR parts 762 and 1980 contained in this final rule require no revisions to the information collection requirements that were previously approved by OMB under control number 0560–0155. A proposed rule containing an estimate of the burden impact of this rule was published on September 25, 1998 [63 FR 51458—51488]. No comments regarding

the burden estimates were received. Comments received relating to forms and the information collected are addressed in the discussion below.

Federal Assistance Program

These changes affect the following FSA programs as listed in the Catalog of Federal Domestic Assistance:

10.406—Farm Operating Loans
10.407—Farm Ownership Loans

Change in CFR Parts

FSA is moving its regulations governing the guaranteed farm loan program from 7 CFR part 1980, subparts A and B to 7 CFR part 762. This will better organize FSA regulations and incorporate farm loan program regulations with other FSA programs.

Discussion of the Final Rule

In response to the proposed rule published September 25, 1998, 231 respondents from 35 States and the District of Columbia commented. Most of the comments involved a number of different sections of the proposed rule. Comments were received from Agency employees, farm interest groups, lenders, lender and employee associations, individuals, and Members of Congress. The comments received on the proposed rule were overwhelmingly in support of most of the changes proposed by the Agency.

This regulation provides the features, requirements, and restrictions of the program. However, internal Agency procedures and processes were excluded. The Agency will issue a handbook and update its lender manual. These documents will, within the framework of these published regulations, more thoroughly describe processes for the Agency and lenders, identify and discuss the completion of specific Agency forms, and otherwise provide more detail than is in the **Federal Register**.

There were many comments concerning problems with program delivery. Issues included Agency employees not following or knowing regulations, slow processing, inconsistency between offices, lack of staff, and need for training. These issues will be handled internally by the Agency and are not addressed in this document.

The 1999 Act contains several revisions to the statute governing the Agency's farm loan programs. Statutory changes that impact guaranteed loan limits and borrower training requirements are discussed below in response to comments received on the proposed rule.

The 1999 Act also eased the debt forgiveness restrictions which were mandated by the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act). Previously, any FSA borrower receiving debt forgiveness would be ineligible for additional FSA credit. The 1999 Act provides that a borrower may have received debt forgiveness on three occasions prior to or on April 4, 1998, and still be determined eligible for guaranteed credit. Borrowers receiving debt forgiveness on more than three occasions, or any debt forgiveness after April 4, 1996, will be ineligible for FSA guaranteed loans.

The 1996 Act provided an additional exception to the debt forgiveness provision. A borrower who received debt write down, as compared with other types of debt forgiveness, previously could receive an annual operating loan. The 1999 Act expanded this exception to include borrowers who are current on confirmed bankruptcy reorganization plans. These changes have been incorporated into the final regulation at § 762.120.

Appraisals

One hundred and nine comments were received concerning raising the threshold for requiring a certified general appraiser from $100,000 to $250,000. Nine comments objected to the change, 94 supported it, and six requested clarification or modifications. Those supporting the change cited reduced costs, shortened application process and compliance with their regulatory requirements as reasons. The concern, expressed by all of those opposed to the change, is that relaxing the policy will adversely affect the quality of the appraisals. Most of the commenters objecting to the change stated that many of the appraisals currently received from certified general appraisers are not correct and do not adhere to Uniform Standards of Professional Appraisal Practice (USPAP). Another concern was that less qualified licensed appraisers (previously used for transactions up to $100,000) were more experienced with residential rather than agricultural appraising and not qualified to perform the more complicated appraisals of agriculture property.

On transactions of $250,000 or less, the proposed rule provided that the Agency would determine if the appraiser possessed adequate experience and training to estimate the value of the type property in question. It also required appraisals to be completed in accordance with USPAP. The Agency desires to comply with industry standards, and with the controls in place, is convinced that relaxing the policy will not adversely affect appraisal quality. Therefore, the Agency has decided to leave the threshold at $250,000, as in the proposed rule with minor editorial changes in § 762.127(d)(3) to clarify that the entire appraisal process, not just the report, will be completed in accordance with USPAP. The Agency has requested and the Office of Management of Budget (OMB) has granted an exception from OMB circular A–129 for this purpose.

Three comments requested additional clarification of what is an acceptable appraiser. The proposed rule stated that the lender must demonstrate to the Agency's satisfaction that the appraiser possesses sufficient experience or training to estimate values. As proposed, the lender could provide any documentation considered appropriate to demonstrate this expertise. The level of expertise could vary by region and complexity of agriculture. The Agency did not want to dictate and limit what could be used to demonstrate appraiser competency. However, a revision has been made to § 762.127(d)(2)(i) to require the appraisal expertise to be in appraising agricultural property. Additional guidance consistent with this standard will be placed in the agency handbook and lender manual.

Several comments noted an inconsistency between the proposed rule and the preamble. The preamble incorrectly stated that the appraiser must use all three approaches to value, while the regulation required that appraisal reports comply with USPAP standards. The final rule at § 762.127(d)(3) should eliminate any confusion concerning this matter. It states that real estate appraisals must be completed in accordance with USPAP.

Two respondents suggested we permit only the original appraiser to update an appraisal. One of the comments went on to say USPAP requires that the original appraiser be involved in an update. These suggestions were not adopted because the Agency believes that the requirement that appraisals be performed in accordance with USPAP adequately covers the respondents' concern. The agency handbook and lender manual will include clarification and guidance of the standard published in this final rule.

Two comments objected to approving a loan subject to an adequate appraisal. Eighty-five respondents supported this change. A concern appears to be that the lender may ignore the conditions of approval and close the loan without adequate security. The Agency would then refuse to issue the guarantee. The

Agency has determined that the benefits of a simplified application process outweigh the minimal risk to the lender that the Agency would so act and will not adopt this suggestion.

Another comment suggested an estimate of value be included with the application. This will be included on the application form.

One respondent suggested the regulation include the specific items needed in a chattel appraisal. The regulation states that lenders may use the Agency's form or any other form containing at least the same information. The Agency feels this adequately identifies the information required for a valid appraisal.

Two comments were received suggesting outside chattel appraisers be required for refinancing bank debt. Another comment suggested bank loan officers not be permitted to perform real estate appraisals over $100,000. Since the regulation permits the Agency to determine if the appraiser possesses adequate experience or training, the Agency feels safeguards are adequate to assure valid appraisals by lenders. Therefore, these suggestions are not being adopted.

Packager Requirements

Ninety-seven comments were opposed to the proposal to restrict lender use of loan packagers. Many of the comments preferred to address excessive fees by simplifying the paperwork requirements and making packaging services unnecessary. Six comments suggested varying levels of restrictions or clarification such as limiting the fee to a certain percentage of the loan, prohibiting packager use entirely, or clarification of how any limitations would be enforced. Although the Agency feels that the proposed rule change reduced paperwork requirements, it agrees that packagers do provide a valuable service to some farmers and any arbitrary limitations would not be warranted. Therefore, the use of packagers will not be prohibited or restricted in the final rule.

Loan Limits

Twenty-eight comments were received indicating the maximum guarantee loan limits of $300,000 for Farm Ownership (FO) loans and $400,000 for Operating loans (OL) were too low. Numerous suggestions to raise or modify the limits were provided. Loan limits are established by statute and the Agency has no authority to raise them. However, the 1999 Act did modify the loan limits and provided for a maximum of $700,000 total guaranteed FO and OL indebtedness. This will permit an applicant to receive a total of $700,000 guaranteed OL and FO loans. The $200,000 Direct FO and OL limitations remain in place. The result is that in some situations, the borrowing limit may be $900,000. The revised limitation was incorporated into § 762.122.

One comment was received concerning the need to conform approval authorities with other FSA regulations. This suggestion will be implemented administratively.

Loan Restrictions

One comment suggested that lenders be permitted to advance funds to purchase cooperative membership stock outside the guarantee. There is nothing in existing or proposed regulations that would prevent a lender from financing stock purchases with unguaranteed funds. Therefore, no change to the regulation is needed.

One comment was received concerning joint ventures, suggesting a relaxing of the requirement that members of an entity must operate the farm. The proposal is that the applicant only need take an active role in management. The Agency is unable to adopt this suggestion as §§ 302 and 311 of the CONACT requires that the members holding a majority interest in the entity must operate the farm. However, the Agency has clarified the regulation to say only the members holding a majority interest must operate the farm. See § 762.120(e) and (f).

One respondent suggested limiting the size of the farm dwelling to be financed with a guarantee. Such a restriction would be arbitrary and contrary to the Agency's policy of reducing regulatory limitations. The Agency is not directly supervising the loan, does not wish to become actively involved in the loan applicant's management decisions and is not in a position to dictate the maximum size of a dwelling. The lender is required to place limits on borrower expenditures to prevent the buildup of excessive debt, with the resulting inability to repay the loan. The suggestion was not adopted.

One comment stated that the guaranteed program is designed for row crop loans and does not fully address the needs of livestock producers. No specific examples were provided. The Agency does not agree with this comment because livestock issues are specifically discussed throughout the regulation.

This same individual objected to the lender certification requirements. Since the Agency is unable to identify the specific objectionable requirements the commentor is referring to, the Agency is unable to address this comment.

One comment was received requesting that ''bridge'' loans made by the lender while waiting for a final decision from the Agency can be included under the guarantee, once it is approved. This practice, although not prohibited by regulation, is strongly discouraged. There could be a question of the need for a guarantee if the lender was willing to close the loan without one. However, if the lender is willing to assume the risk of making a bridge loan prior to any Agency decision to guarantee the permanent loan, the final rule does not prohibit including such debt under the guarantee. This will be further discussed in the agency handbook and lender manual.

One comment suggested that the lender should certify at loan closing that no material adverse change has occurred in the operation since the request for guarantee was submitted. The existing regulation requires this certification to reveal changes since the conditional commitment was issued. The Agency agrees with this suggestion and adopted it in the final rule.

Five comments suggested removing the prohibition of additional guaranteed OLs after a borrower has received loans for 15 years. This requirement is statutory and cannot be eliminated without legislative action.

One comment suggested the Agency treat a husband and wife applicant as an individual, rather than a joint operation. The Agency agrees that this can be burdensome for some lenders. However the Agency desires to maintain continuity with its direct loan programs and will reevaluate this issue as the direct loan program regulations are revised.

One respondent suggested that veterans preference for funding be expanded. The Agency feels the current policy, which was not changed in this rule, is appropriate.

Conflict of Interest

One comment indicated that the conflict of interest changes will permit a loan to be made where a conflict of interest exists. This is not correct. The lender is required to provide information concerning ownership or business relationships, and the Agency will determine if these relationships are sufficiently likely to result in a conflict. The Agency revised § 762.110(f) to say relationships, rather than conflicts will be reported to the Agency.

Another respondent suggested specifying a penalty for the lender if a relationship is not reported, but is later identified. A specific penalty is not

being adopted for not reporting conflicts. Such situations are case specific and depending on the severity of the situation, such a violation will be handled with regulations already in place. Additional guidance will be provided in the agency handbook and lender manual.

Interest Assistance

There were seven comments requesting an extension of interest assistance beyond the 7 or 10 years, making the argument that the limits are arbitrary and will result in failure. While the Agency sympathizes with the plight of individuals in need of a subsidy which is expiring, the Agency's mission is one of temporary assistance to farm families. In addition, the interest assistance program is the most expensive of the Agency's guaranteed farm loan programs and limits must be placed to control costs. This recommendation was not adopted.

One respondent requested that interest assistance be available for existing guaranteed loans. The Agency agrees that this would be ideal, and this is currently not prohibited by regulation. However, the interest assistance program is very expensive and funding for paying a subsidy on existing loans is not available. Including this option for all guaranteed loans would result in a dramatic increase in costs for the entire guarantee program or reduce the number of applicants that could receive credit. Therefore, the Agency will not adopt this recommendation.

Additional public comments received concerning the interest assistance program interim rule are discussed below.

Preferred and Certified Lender Programs

The Agency received 131 comments concerning various aspects of the preferred lender program (PLP) and certified lender programs (CLP). Comments from almost all of the respondents supported the introduction of PLP and the minor modifications made to the existing CLP.

The proposed rule provided that lenders could request either PLP or CLP status. One comment suggested that lenders be permitted to operate under both the CLP and PLP if they desired. For administrative simplification and clarity, it is desirable for each lender to operate under only one status. PLP lenders will be able to receive 95 percent guarantees when refinancing Agency direct farm loans or when the borrower will be participating in the Agency's down payment loan program. The Agency did not adopt the suggestion to allow lenders to request both PLP and CLP status.

The proposed rule provided that the Agency will determine which branches of the lender have the necessary experience and ability to participate in CLP or PLP. Comments from 82 respondents suggested that it would be more expedient if the applying institution designate those branches it wishes to be considered for certification, followed by Agency approval or disapproval. The Agency intended this in the proposed rule. The proposed rule provided that lenders desiring PLP or CLP status address, in their request, the State in which they desire status. One comment suggested that applicants specify the county or parish in which they desire status, to assure consistency with the requirement that an office be located near enough to the collateral's location to efficiently discharge loan making and servicing responsibilities. In response to these comments the Agency has included a provision in § 762.106(a)(1)(i) that lenders requesting PLP or CLP status indicate the branch offices they want considered for status.

The proposed rule provided that lenders desiring PLP or CLP status must send their request to the Agency State office for the State in which the lender's headquarters are located. One comment suggested that the lender send the request to the Agency state office for each State in which the lender intends to make guaranteed loans. This suggested change was based upon the fact that banking laws, security requirements, and other lending procedures vary from one State to another and each Agency State office is independently responsible for maintaining credit quality and consistency within the State. The Agency recognizes the administrative need to coordinate among various Agency State offices; however, the Agency believes it would be unnecessarily burdensome to require a lender to apply for status at several Agency offices. The administrative details of coordinating requests that cover several States will be addressed in the agency handbook and lender manual. The Agency did not adopt the suggested change.

Three comments suggested the Agency centralize the processing of CLP and PLP loan making and servicing activities, pointing out that centralization would promote uniformity. The proposed and final rule purposely does not specify where the Agency will process guarantee applications. This will allow the Agency administrative flexibility to configure operations in the most effective manner.

One comment expressed concern about the ''10 loan [sic] in 2 year requirement'' under the CLP. The proposed rule continued existing Agency policy at 7 CFR § 1980.190(b)(1)(vii) and required, for CLP eligibility, that a lender have closed a minimum of ten Agency guaranteed loans or lines of credit and have closed a total of five Agency loans in the past 2 years. The Agency developed these requirements to assure that CLP lenders have a reasonable amount of experience with the guaranteed program. The Agency believes that these requirements are reasonable and will not change them.

The proposed rule provided that, to be eligible for PLP status, a lender must have made at least 20 PLP, CLP, or approved lender program (ALP) loans, or a combination of these type loans within the past 5 years. The ALP is another level of lender status and is being discontinued with this rule. This requirement was established at a level designed to permit the Agency to grant PLP status to one percent of the 2,500 lenders that make guaranteed farm loans each year. Clarification or reconsideration of this requirement was requested by 98 respondents. Several respondents expressed concern that criteria that limited the program to only 25 lenders was too restrictive. Most commenters suggested that the Agency clarify that 20 individual loans, as opposed to 20 borrowers, be the criteria. Comments from two respondents suggested that the 20 should refer to borrowers. Another respondent suggested that either all guaranteed loans or just PLP and CLP loans be considered, suggesting that ALP doesn't show any better quality than a loan from a standard lender. Other comments suggested that all guaranteed loans be considered. Three respondents suggested that the number of loans be eliminated as an eligibility criteria or alternate criteria be considered. One respondent suggested that agricultural banks (as defined by either the Federal Reserve or FDIC) be PLP lenders based on the lenders call report data. The respondent pointed out that call report data is the proven result of the quality of the lender's credit management system. The Agency considered the various comments and determined that criteria that restrict PLP status to one percent of the 2,500 lenders that make guaranteed farm loans each year is too restrictive. The Agency also agrees that all FSA guaranteed loans that a lender has made should be considered.

The Agency wants to establish the PLP eligibility criteria at a level where the lenders have demonstrated adequate

recent experience with the guaranteed program while not being too restrictive. The Agency modified § 762.106(c)(3) to provide that the lender will have made a minimum number of guaranteed loans within the previous 3 years as set out in a separate published notice. As the Agency and lenders become accustomed to these PLP process, the volume requirements may be changed. These changes will be established in a **Federal Register** notice.

One comment requested clarification of the rating service acceptable to the Agency for determining an acceptable level of financial soundness for Farm Credit System institutions. Instead of defining a particular rating or rating service, the Agency has determined a more appropriate requirement is that the lender not be under any regulatory enforcement action based upon financial condition. The Agency's National office will work with the financial institution regulators to assure that lenders holding CLP or PLP status are financially sound. Section 762.106(b)(6) has been modified to include this requirement.

The Agency received 82 comments requesting clarification or parameters as to what elements comprise a satisfactory credit management system. The comments pointed out that more specific criteria that the lender must address would help promote uniformity and assure that objective criteria are considered when the Agency evaluates the lender's credit management systems. The respondents suggested that the Agency use a methodology similar to that contained in bank and thrift regulators manuals. The Agency does not want to unnecessarily limit a PLP lender in the methods used to administer their credit transactions, therefore the Agency has not added additional specificity or regulatory requirements for a satisfactory credit management system. However, the Agency agrees that additional guidance of what should be addressed in the lender's credit management system would result in more uniformity and it will provide such guidance in the agency handbook and lender manual. In addition, § 1980.106(d)(4) has been modified to state that any lending criteria not specifically addressed in the lender's credit management system will be governed by the CLP requirements.

One respondent stated that requiring that the PLP lender show a consistent practice of submitting applications that are detailed with complete information that supports the loan proposal is subjective, and questioned how to ensure consistency across State lines. The Agency will gather and review information from all of the States in which the lender wishes to do business. The process by which this information will be gathered will be addressed in the agency handbook and lender manual.

The Agency proposed that a PLP lender have a history of using the guaranteed programs for new loans instead of refinancing the lender's existing debts. Comments from 93 respondents addressed this requirement. Comments from seven respondents supported this requirement or suggested that the restriction be expanded. One comment suggested that the Agency disallow all refinancing of existing debt, another suggested the Agency limit the guarantee to 80 percent in all cases of refinancing, another suggested that refinancing not be allowed under CLP or PLP, and another recommended that PLP be ''limited to lenders with a past history of promoting new credit and willing to continue activity promoting new credit.'' Comments from 88 respondents either opposed the requirement or suggested that the requirement was too ambiguous and counterproductive. These comments pointed out that the requirement was not amenable to a bright line of interpretation and that the Agency had provided little rationale for imposing the criteria. They commented that this burdensome requirement would cause some lenders to not participate in the program and could adversely impact borrowers. The Agency agrees that the requirement is ambiguous, of limited value, is burdensome and would cause some lenders not to participate. The requirement has been removed.

Three comments suggested that the Agency pre-approve all Farm Credit System lenders for CLP or PLP. Because each separate Farm Credit System entity will need to select which status they desire and meet those eligibility criteria, the Agency cannot adopt this recommended change.

One respondent suggested that applicants for CLP and PLP status should be required to have fulfilled obligations regarding graduation and market placement. Since the Agency is responsible for these programs and cannot transfer these obligations to a lending institution. The Agency did not adopt the suggested additional eligibility requirement.

One respondent suggested that the Agency revoke CLP or PLP status if the lender does not make 40 percent of the guaranteed operating loans and 25 percent of the guaranteed farm ownership loans to beginning farmers. While the Agency agrees with the need to encourage lending to beginning farmers and does target guarantee funds for that purpose, the Agency does not feel revocation of lender status would be a reasonable method of encouragement; therefore the Agency did not adopt this suggestion.

Lender Eligibility

One respondent suggested that standard eligible lenders be approved for 5 years, rather than demonstrating eligibility for each guarantee request submitted. The Agency did not change the requirements from existing practice and does not contemplate that a standard eligible lender will need to provide all evidence demonstrating eligibility with each guarantee request. The Agency did not adopt the multi-year eligibility suggestion for standard eligible lenders. However, the language in the introductory paragraph of § 762.105(a) is clarified so that the lender must demonstrate eligibility and provide evidence when the Agency requests.

One comment suggested that the Agency use the terminology ''standard lender'' rather than ''standard eligible lender'' to simplify reference and that the Agency add an abbreviation for ''standard lender.'' Another comment suggested the terminology should be ''eligible lender.'' Since the use of terminology and an abbreviation is within the Agency's discretion, FSA decided that its own terminology is reasonably descriptive and did not to adopt either recommendation for publication.

One respondent suggested that the Agency require lenders to have agricultural loan experience. The respondent was concerned that without this requirement, the lenders may not have the necessary experience to properly make and service agricultural loans. The Agency generally agrees with this concern, and has added clarifying language to § 762.105(b)(1) to require that the lender must have experience in making and servicing agricultural loans.

One respondent suggested that the Agency require that lenders have a permanent presence in the State where they originate loans. The Agency believes that the eligibility requirement contained in the proposed rule concerning lender locations is adequate to assure good loan servicing and did not revise the rule.

The Agency received two comments requesting that the Agency clarify or remove the requirement that a lender be in ''good standing'' with all applicable State or Federal regulatory agencies. The Agency agrees that this requirement was ambiguous and removed it.

Two comments suggested that a ''maximum loss rate'' eligibility

requirement for standard eligible lenders be established. The Agency did not establish a ''maximum loss rate'' for Standard Eligible Lenders; however, in response to these comments, it added a requirement in § 762.105(b)(2) that the lender must not have losses or deficiencies in processing and servicing guaranteed loans above a level which would indicate an inability to properly process and service a guaranteed loan.

One respondent recommended that the Agency establish a method to remove standard eligible lenders from the guaranteed loan program when the lender does not perform in accordance with its agreements. The Agency may revoke a lender's PLP or CLP status for failure to meet a regulatory requirement, but the Agency has no comparable ''penalty'' for standard eligible lenders. The Agency may recommend that a lender be debarred or suspended from participation in all Government programs, but cannot merely revoke participation in the Agency's guaranteed programs. The Agency agrees with the concern and § 762.105 allows the Agency to determine that a lender may no longer participate in the guaranteed farm loan programs. This provides a less severe penalty than debarment or suspension, which would restrict participation in all Government programs. Additional guidance will be provided in the agency handbook and lender manual.

One respondent suggested that lenders notify the Agency when the lender assigns responsibilities to other than the authorized designee and that the Agency should reconsider the lender's CLP or PLP status at that time. The commenter noted that CLP loan making and servicing quality often deteriorate when the lender changes their ''authorized designee''. The purpose in revising the regulation was to reasonably increase lender loan making and servicing flexibility. Therefore, the Agency chose not to adopt the suggestion.

One respondent recommended that consideration be given to allowing standard eligible lenders make farm ownership loans. The proposed and final regulation allows all lenders, regardless of status, to make either operating loans or farm ownership loans.

The agency received 161 comments concerning the Agency's consideration of allowing certain non-traditional financial entities to make guaranteed loans. The respondents in 156 comments opposed the expansion of lender eligibility criteria, citing concerns that unregulated lenders such as machinery manufacturers and agricultural supply firms lack credit expertise and have an inherent conflict when they are trying to provide financing for a sale. Two commenters suggested that eligibility should be expanded based on financial strength, while one commenter suggested that it would be ''beneficial'' to expand eligibility to some mortgage or insurance companies. One respondent suggested that the guarantee program eligibility be expanded to authorize guarantees for farmers when the individual is a retiring farmer selling land to a beginning farmer. The general tenor of the comments was that a lender must have experience in making and servicing agricultural loans and have the capability to make and service the loan for which a guarantee is requested. The Agency agrees and has decided not to expand the eligibility to nontraditional lenders.

Several respondents suggested that the Agency not require lenders to provide information to consumer and commercial credit reporting agencies. The comments noted that this requirement is inconsistent with standard practices of many lenders. Rather than requiring lenders to provide the information, the Agency will provide the information on guaranteed loan extension to credit reporting agencies, as required by the Debt Collection Improvement Act of 1996. The proposed lender requirement was removed.

Percent of Guarantee and Maximum Loss

The proposed regulation provided that all guarantees issued to PLP lenders would be at 80 percent, unless the loan was eligible for a 95 percent guarantee. Comments from 15 respondents suggested that PLP guarantees should be at a higher percentage, arguing that lenders would not use the PLP if only an 80 percent guarantee was available and it is inconsistent for the Agency to penalize the program's best performing lenders with a lower percent of guarantee. The Agency should encourage its best lenders to be active. The Agency agrees with these comments. Loss rates for CLP lenders have been lower than those for other lenders and the Agency expects this to continue under the PLP program. In addition, since the PLP will take less time to process, the Agency's administrative cost savings will be greater if more lenders participate in the PLP. Also, the statutory language prescribing the percent of guarantees for CLP and PLP lenders is identical. For these reasons, the Agency has revised § 762.129(c) to authorize up to a 90 percent guarantee for PLP lenders.

Loan Approval and Issuing the Guarantee

Eight respondents suggested that the 14 day automatic approval for PLP should be removed, arguing that it is unreasonable, a bad business practice, and not in the best interest of the Government. The Agency is sympathetic to these arguments, but disagrees with them. The review of PLP applications will be significantly reduced from present guarantee application review requirements and the Agency has management methods and responsibilities to assure that the PLP loans are timely reviewed. The automatic approval is statutorily mandated and will not be modified in the final rule. One comment suggested that, at a minimum, the automatic PLP approval requirement be changed to 14 business days, citing concern for Agency office coverage. Because calendar days are also statutorily mandated, this suggestion was not adopted.

Two respondents recommended requiring applications be submitted by certified mail to document the beginning of the 14 day time period. The Agency chose not to impose this additional burden; however, the Agency will send the lender a letter confirming receipt of the application and indicating the date of receipt. Section 762.130(a)(3) has been added to include this procedure.

Two respondents suggested the Agency clarify what happens in cases where the Agency has asked for additional information or clarification. The Agency is committed to providing a response to the lender within 14 days of receipt of a complete application. However, in some situations, it will be impossible for the Agency to satisfy its environmental responsibilities based on the information supplied with a PLP application. In those situations, the Agency will notify the lender within the 14 day time period of the additional information that is needed to complete the Agency's environmental review, and that the 14 day automatic approval is suspended until this information is received. After the Agency receives this additional information, another 14 day approval period will start. The Agency does not anticipate this additional information will be required in a large number of cases. Section 762.130(a)(2)(ii) has been revised to provide for this procedure.

One respondent suggested the 14 day processing timeframe for CLP be removed. Since this is a statutory

requirement at § 339(c)(4)(C) of the CONACT, no modification was made in response to the comment.

Another respondent requested that the Agency ensure that all approvals are made within 14 days. Since the Agency's methods to ensure that all approvals are timely issued is an administrative matter, this issue will be addressed in the agency handbook. No changes were made in the regulation as a result of this comment.

Insurance and Farm Inspection Requirements

One comment suggested that the lender be required to obtain an assignment of crop insurance and be shown as loss payee. This requirement can be addressed, as necessary, as part of collateral requirements in the agency's conditional commitment for guarantee. This will be further clarified in the Agency handbook and lender manual.

Security Requirements

One respondent suggested that the requirement that a lien be taken on all ''significant nonessential assets'' is contradictory to the requirement that the lender is responsible for ensuring that adequate security is obtained. A lien on nonessential assets is often unnecessary for security purposes, and does not improve the quality of the loan. The Agency agrees with the comment and removed the requirement. If the Agency determines, on a case by case basis, that a lien on a nonessential asset is needed, to assure that the loan has adequate security that requirement may be included as a condition for issuing the guarantee. Additional guidance will be provided in the agency handbook and lender manual.

One respondent requested the Agency amend the proposed rule to allow individual principals to own collateral where the borrower is a legal entity. The proposed rule at § 1980.126 did not specify who has to own the collateral, therefore no change was made in § 762.126 to address this comment.

One respondent suggested limiting real estate financing to no more than 90 percent of the appraised value. While the Agency recognizes the risk of 100 percent financing, and that additional collateral should be taken when available to adequately secure the debt, the Agency does not want to prohibit lenders from providing credit to otherwise viable operations, because of tight collateral margins. This suggestion was not adopted, however the agency handbook and lender manual will provide guidance on this issue.

One respondent recommended that the Agency should clearly specify that a line of credit used for the purchase of feeder livestock must always be secured by a first lien on the livestock. The regulation states at § 762.126(e)(3) that junior liens on livestock will not be relied upon for security unless the lender is involved in multiple loans to the same borrower and also has first lien on the collateral. This requirement adequately addresses the respondent's concern in that it will assure a first lien on livestock except in very limited situations. The suggestion to add an additional regulatory requirement was therefore not adopted.

One respondent requested the regulation be clarified regarding acceptable differentiation on identifiable livestock. The final regulation, in § 762.126(c) explains that, for security to be identifiable, the lender must be able to distinguish the collateral item and adequately describe it in the security instrument. This requirement applies to all security, including livestock. The Agency does not believe additional regulatory clarification is necessary, however, additional guidance will be provided in the agency handbook and lender manual.

Line of Credit

The proposed rule allows lenders to advance funds from a line of credit for a borrower to make term debt payments on capital items. Comments were received from 109 respondents concerning this proposed change, with 98 comments supporting the change because it will conform the guaranteed program more closely to current industry practices. Eight respondents recommended the Agency not allow lenders to advance funds from a line of credit for a borrower to make term debt payments on capital items. Two comments were concerned that this use would reduce the number of loans the Agency could guarantee as each borrower's lending needs would increase. The other opposing respondents argued that advancing for term payments was not prudent lending, and should be restricted. One respondent suggested that the Agency restrict payments on non-agricultural and real estate debts. The Agency considered the comments and determined that the practice of making term payments on capital items cannot be deemed imprudent lending, because that practice is customary in much of the agriculture lending industry. While the Agency recognizes that this additional authorized purpose may marginally impact funding availability, the advantages of a less restrictive program that will benefit more borrowers outweigh that concern. The Agency determined that an overall limitation on non-agricultural and real estate debts was too restrictive, however the Agency addressed the concern by clarifying in § 762.121 that the debt be for authorized FO loan or OL purposes.

One respondent recommended that the Agency eliminate the line of credit program and allow the lender to renew loans annually without submitting a complete new application. The Agency could not discern an advantage for the lenders or borrowers from the suggested change and so chose not to implement this recommendation.

One respondent suggested that the Agency authorize revolving lines of credit for capital purchases and term loans. The Agency chose not to implement this recommendation because it is concerned that adequate controls cannot be effectively implemented to assure proper supervision of major financial planning decisions.

Interest Rates, Terms, Charges, and Fees

The Agency provided the interest rate may not exceed the rate the lender charges its average farm customer. Two comments recommended that the Agency remove restrictions on the interest rate or allow a more reasonable range of interest rate. One comment recommended that the interest rate ceiling should be the rate paid by the average farm customer in the same interest rate program. The comment explained that a lender may have many rate options that are based on the risk profile of the borrower and other factors, and it would be more acceptable to limit the rate on guaranteed loans to no greater than some specific spread over the lender's index rate. The comment argued that the proposed regulation may not permit lenders to price to market in many instances. Because the Agency believes that the interest rate limitation is a reasonable, understandable restriction, and that the guarantee reduces the lender's credit risk in loans, the Agency did not adopt the proposal.

One respondent recommended that the Agency clarify what penalties will be imposed upon a lender that charges more than the rate charged to their average customer. A lender that charges more than the rate charged to their average customer is in violation of the terms of the lender's agreement and subject to revocation of PLP or CLP status under § 762.106(g). A standard eligible lender in violation of the terms of the lender's agreement could be prohibited from making additional loans under § 762.105(b)(2). In addition, the

Agency may contest the guarantee under § 762.103(a) if the lender misrepresents the interest rate charged. Because these penalties were already contained in the regulation, the Agency did not add any clarifying language to the regulation in response to this comment.

One comment recommended creating incentives for lenders who seek low cost funding sources, limit spreads and guide borrowers toward the use of long term fixed rate loans. The Agency fully supports the goal of providing competitive as well as fixed rates to guarantee borrowers, the advantages to financially stressed producers are well documented. Many lenders are able to provide such rates through participation in the secondary market and such activity is encouraged by the Agency. The comment did not provide specific suggestions, but encouraged the Agency to study these issues further. The Agency agrees that this issue warrants further study.

One respondent recommended that the 7 year limitation on operating loans be removed because it is unrealistic for a young farmer to completely pay for cattle and machinery in 7 years. Section 316(b) of the CONACT requires that guarantees on all operating loans be repaid in a term not to exceed 7 years; therefore, the Agency did not adopt the recommendation. The regulation at § 762.124(d) does provide that repayment schedules may include unequal or balloon installments if needed to establish a new enterprise.

The proposed rule stated that crops, livestock, or livestock products produced are not sufficient collateral for loans with balloon installments. Two comments recommended that breeding livestock should be acceptable collateral. The Agency agrees with this recommendation and has modified the rule accordingly.

One respondent recommended that balloon installments must be secured by real estate. The Agency did not adopt this recommendation because it would be too restrictive.

Two respondents recommended that balloon installments should be authorized for FO loans. The final rule modified § 762.124 to provide that balloon installments are authorized for any loan issued under a loan guarantee.

One respondent recommended that balloon installments should not be authorized because the use of balloon payments will cause excessive future servicing requirements and future losses. The Agency does not agree with the rationale for limiting balloon installments and believes there will be situations where a balloon payment is prudent, such as when reduced installments are needed to establish a new enterprise, develop a farm, or recover from a disaster or an economic reversal. Therefore, the Agency did not change the rule.

Year 2000 Compliance

The proposed rule stated the Agency was considering adding a requirement that lenders have computer systems which are year 2000 compliant and requested comments on this requirement. The Agency received seven comments opposing this requirement and five comments in support. Comments pointed out that lenders were already addressing the issue internally and regulators are closely monitoring this problem. Regulators already require lenders to have a year 2000 action plan and have been incorporating this into lender reviews. Therefore, the Agency did not adopt this requirement, however, lenders are encouraged to ensure their systems are compliant.

Application and Forms

The proposed rule reduced application requirements to minimize burden on all lenders applying for guarantees. Eliminating the need for the lender to submit copies of all leases and contracts, and the need to submit detailed legal documentation for all entity loan applicants were adopted. The rule also permitted the agency to approve a loan subject to an acceptable appraisal. The Agency received 90 comments supporting its reduced application requirements.

The agency received one comment requesting articles of incorporation or partnership agreements be submitted as part of a complete application and one comment requesting the application provide information on entity members. The comment requesting entity legal documents indicated concerns that the Agency's approval official would not be familiar with the entity's structure. The lender's loan narrative submitted with each application will contain sufficient description of the entity's structure, owners, and roles of the entity members; therefore, no changes are being made regarding entity information.

One comment requested the Agency specify the items which must be contained in a line of credit agreement. In response to this comment and to reduce the burden, the Agency removed the requirement in the proposed § 1980.110(b)(5) that a loan agreement be submitted to the Agency. The information generally included in a loan agreement is adequately addressed in the loan narrative.

Two comments were received regarding credit reports. One comment requested all lenders submit credit reports or certify to credit history. The Agency does not believe this is necessary and has proposed no changes. Credit reports will be required for all loans and CLP lenders may certify to satisfactory credit history. Any unusual items will be addressed in the lender's loan narrative. One comment also requested that commercial credit reports not be required for small, closely held farm entities. The Agency does not specify when a commercial credit report is required. We believe this is best addressed on a case by case basis between the Agency's responsible office and the lender. No changes are being made regarding credit reports.

Financial and Production History

The proposed rule reduced the amount of financial and production history required to be gathered and analyzed by lenders. The Agency reduced the history from 5 years to 3 years on loans above $50,000, eliminated history requirements for loans under $50,000, and permitted CLP lenders to base cash flows on financial history rather than requiring production history. In addition to the 90 comments supporting reduced application requirements, 17 comments specifically supported reducing the financial history requirement from 5 years to 3 years.

The Agency received ten comments requesting the proposed requirement be strengthened. Four comments requested 3 years of production history be required in all cases; three comments requested 5 years of financial and production history be required in all cases; and three comments requested the Agency require 5 years financial and production history if the loan purpose is for refinancing debt. Two comments suggested the lender's file contain production and financial history. Comments requesting additional financial and production history cited concerns over credit quality; specifically, the ability of Agency loan officers to determine whether the loan applicant's cashflow projection was reasonable.

The Agency has considered the credit quality concerns and continues to believe that 3 years financial and production history is sufficient to arrive at reasonable cashflow projections. In addition, CLP and PLP lenders have already demonstrated the ability to properly process a loan application and should not be required to submit financial and production history. Therefore, the suggestions are not being adopted.

Regarding small loans, the risk of loss on loans under $50,000 is much smaller and does not warrant the same amount of documentation. Also, under past procedures, lenders often could not justify making small loans under the guaranteed program because of the excessive administrative costs to gather and process the required information. However, operations requesting these loans are likely to be smaller, and the lender typically can estimate the feasibility using industry standards. Therefore, the Agency is not making any changes from the proposed rule regarding financial and production history.

PLP Application

The Agency proposed that a complete application will consist of at a least (1) an application form, (2) a loan narrative, and (3) any other items agreed to during the approval of the PLP lender's status. The Agency received two comments requesting PLP lenders be required to submit a cashflow and one comment requesting the Agency to require PLP lenders to certify their cashflow is based on past history. Feasibility of the loan applicant's request will be addressed in the lender's loan narrative. Furthermore, as part of the request for PLP status, a lender will describe their application requirements and underwriting standards. The PLP lender will certify that each application is processed as proposed in their application for status; therefore, the proposed requirements are sufficient.

The Agency received one comment requesting the Agency clarify what is required of PLP. PLP lenders will be required to submit an application form and loan narrative to the Agency. The particular items the lender maintains in their file will vary depending on that lender's procedures and will be defined during application for PLP status. Therefore, it would not be appropriate for the Agency to further define the requirement in the **Federal Register**.

Small Loan Applications

In the proposed rule, the Agency substantially reduced the amount of documentation required for loans under $50,000. This was directed by 333A(g)(1) of the CONACT. The Agency received 96 comments supporting the abbreviated application requirements for loans under $50,000.

The Agency received four comments requesting the $50,000 threshold be increased. While the Agency does have some administrative latitude to increase this threshold, the CONACT clearly identifies $50,000 as Congress' intended level. After the Agency has more experience and historical data to analyze the impact of reduced documentation requirements on its small loans, the level may be increased beyond $50,000.

The Agency received four comments requesting lenders be able to determine whether a sufficiently strong equity position exists to require an appraisal. The proposed § 1980.127(b)(2) stated that the Agency determined whether a strong equity position exists. This requirement was removed from § 762(b)(2). As with most other requirements, the lender is expected to make the initial determination subject to Agency approval. On a case-by-case basis, if the Agency disagrees with the lender's recommendation, they can require an appraisal as an approval condition.

The Agency received three comments requesting clarification that a lender's cash flow budget may be abbreviated. The Agency agrees with this comment and clarified in the definition of cash flow budget at § 762.102(b) that cash flow budgets for loans under $50,000 are not required to have income and expenses itemized by categories.

The Agency received three comments requesting it include the ability to require lenders with excessive losses or poor performance to submit full documentation required on loans above $50,000. The comments were concerned about potential lender abuse with no Agency authority to require needed documentation. The Agency agrees with these comments and included the authority in § 762.110(a)(4) to require lenders with losses in excess of the maximum CLP loss rate to submit those additional items required of loans above $50,000.

The proposed rule stated the Agency expects lenders to utilize the same level of documentation and evaluation as they require for their nonguaranteed loans under $50,000. The Agency received one comment requesting banks be required to submit their written policies for approval before the loan is made. While the Agency understands the potential for lenders to perform lesser evaluation for Agency guaranteed loans under $50,000 than it does for its nonguaranteed loans, it believes sufficient safeguards are already in place to prevent this from becoming a major problem. Lenders will be aware of the requirement through the lender manual and training. Lenders who do not perform the same level of evaluation may have a loss claim under the guarantee adjusted or denied. Therefore, this recommendation was not adopted.

The Agency received one comment requesting additional information requirements be reduced, not just the application form. The Agency already had language to reduce information required on the application by eliminating financial and production history and verifications of debt and income. The Agency feels the remaining requirements for information are necessary for adequate oversight and program administration. No further changes are being made.

The Agency received one comment requesting lenders be prohibited from making two $50,000 loans to same borrower in order to circumvent the threshold. The Agency agrees. The regulation as proposed did not prevent this circumstance. The Agency revised the language in section § 762.110 to apply the $50,000 to any one package of loan guarantee proposals.

Forms

Four comments requested the Agency automate forms or allow applications to be filed electronically. Several private companies provide financial software packages which print Agency application forms. Many Agency forms are now available through the Agency internet site. In addition, the Agency is working on the problem of applying through the Internet. At this time, many of the Agency's local offices do not have the ability to receive electronic applications. As our automation system is updated we will pursue electronic applications.

Eligibility

The Agency received one comment requesting the Agency revise its loan applicant eligibility criteria to require loan applicants to have been truthful and not have provided false or misleading information. The comment expressed concerns that the Agency has no way to deny loan guarantees to these loan applicants. The Agency agrees with this comment and has included the eligibility condition in § 762.120(f).

The Agency received one comment requesting delinquent IRS debt be included in the requirement that a borrower cannot be delinquent on Federal Debt. This exception to the definition of a Federal Debt is permitted by 31 U.S.C. 3720B(a). Rather than administratively modify the definition of Federal Debt, the Agency considers delinquent IRS debt as part of its creditworthiness determination and also in the cash flow budget used to determine feasibility.

Family Farm Definition

Four comments suggested the Agency remove its requirement that a loan applicant has been a family farmer, or

that the Agency provide a uniform definition of family farmer. Two comments recommended simply ensuring the loan applicants were producers of agricultural products. Any modification of the family farmer definition should be consistent between the Agency's direct and guaranteed programs; therefore, these comments will be addressed when the Agency revises its direct program regulations.

Financial Feasibility

The Agency received one comment that financial feasibility requirements be clarified to state that in cases of startup or expansion, factors beyond financial history should be considered. This was included under projecting yields, but not for other projections in cash flows. This was an oversight and the Agency has added the ability to use other sources to develop a cashflow projection when actual history is not available or not appropriate to § 762.125(a)(5).

Advancing Funds

The Agency received one comment recommending that the lender be required to only advance funds when needed by the borrower. The commenter was concerned that some lenders advance more funds than needed by the borrower at that time, thereby accruing excessive interest charges. While the Agency understands this does occur in isolated cases, the problem should be worked out between the lender and the borrower. The Agency believes it is the borrower's responsibility as manager of the farm operation to decide when funds are needed. Furthermore, identifying what amount is excessive would be unreasonably burdensome for the Agency and the lender. No changes were made regarding advancing of funds.

Environmental

The Agency received 82 comments requesting clarification of the impact on a lender of finding a previously undetected environmental hazard, particularly whether the guarantee will be put in jeopardy. The proposed regulations require the lender to perform a due diligence investigation for any guarantee request involving real estate. Unless the lender fails to perform the due diligence investigation, or the Agency can demonstrate that the lender was negligent in performing the investigation, the guarantee will not be in jeopardy. Further clarification may be incorporated into Agency environmental regulations, agency handbook, and lender manual, see also the discussion below concerning the use of the American Society of Testing Materials (ASTM) transaction screen questionnaire.

The Agency received 72 comments requesting reduced environmental review for small loans or expressing concern with the cost associated with the reviews. In addition, the Agency received one comment requesting the lender be required to provide evidence of environmental compliance with a small loan application. The environmental statutes governing Farm Loan Programs do not permit the Agency to differentiate its review based solely on the amount of the transaction. However, the Agency believes loan requests under $50,000 involving real estate will normally not require a complicated environmental review. These loans are typically made to smaller operations and do not involve extensive land development or large animal populations. The Agency intends to simplify its environmental review process as it revises its environmental regulations.

The Agency received two comments requesting the ASTM transaction screen questionnaire not be required. In considering this requirement, the Agency believed a standard for due diligence needed to be identified. In our research, the Agency selected ASTM as the most widely accepted industry standard for a due diligence investigation. The Agency also recognizes that many lenders already have adopted investigation forms and procedures comparable with the ASTM form. To permit lenders to use their own forms and processes, the proposed rule stated the Agency will accept any similar documentation to the ASTM transaction screen questionnaire. The Agency believes this provides sufficient flexibility.

The Agency received one comment requesting clarification of lender and Agency environmental responsibilities. Section 762.128 provides that lenders will assist in the environmental review process by providing environmental information, and enumerates the specific requirements and documentation expectations. Any remaining investigation or determination is the Agency's responsibility. There are many environmental laws applying to Agency loans. Only those which require direct input from the lender have been addressed in the these regulations. Rather than duplicate the requirements for Agency review, the environmental regulations governing the Agency's review are presently published in 7 CFR part 1940 subpart G. The agency handbooks will clarify the procedures for the Agency's review.

The Agency received one comment requesting that compliance with wetlands and HEL be included as an eligibility requirement. This requirement is already part of 7 CFR part 1940, subpart G. To avoid duplication and potential conflicts between regulations, the Agency has decided to reference the environmental regulations rather than repeat the requirements in these regulations.

Lender's Debt Instruments

The Agency proposed removing the requirement that a lender's promissory note not contain a ''payment on demand'' clause. The Agency received two comments requesting this restriction be retained. This long standing requirement was intended to ensure lenders clearly establish the payment schedule on the promissory note. In evaluating debt instruments, the Agency found that many contained industry accepted language which ensured the lender's ability to accelerate a note in the event the collection of the loan was impaired. Many Agency offices interpreted this language to be in violation of the regulations when the note satisfied the intent of the regulations. The Agency therefore clarified its intent by stating the lenders note must clearly state the principal and interest repayment schedule, but the regulation does not prohibit demand clauses.

Loan Underwriting

The Agency requested comments on its underwriting standards, particularly whether the Agency should adopt more comprehensive criteria. The Agency received 16 comments on its underwriting criteria. Seven comments suggested the Agency remove its requirement for a 1.10 term debt and capital lease coverage ratio (TDCLCR), with one commenter offering the alternative of incorporating exception authority. Comments stated that during years of depressed prices, disasters, or other unforseen problems a 10 percent margin was not possible to project. The Agency adopted the 10 percent margin as a provision for future capital replacement as required by § 339(b) of the CONACT. Approving a loan to an operation unable to project a 10 percent margin would be imprudent lending and surely result in higher default rates for the program. The Agency continues to believe that a TDCLCR of 1.10 is necessary, particularly in the absence of any other criteria to measure financial feasibility.

One comment recommended the Agency implement a credit scoring system and several comments suggested

the Agency incorporate additional financial ratios into its decision. While the Agency is aware of the merits of incorporating financial ratios or a credit scoring system, further analysis is needed before implementing such a change. The Agency will continue to study improved methods to underwrite its loans.

The Agency received 82 comments requesting clarification of its positive cash flow definition. While the Agency did not add more detail to this already extensive definition, it added a definition of the cash flow budget in § 762.102 to provide a mechanism for achieving a positive cash flow.

Loan Servicing Comments

The comments received regarding loan servicing were overwhelmingly in support of most of the changes proposed by the Agency. Most of the comments received were from lenders that participate in the Agency's guaranteed loan program, Agency field office personnel, or associations that represent the interests of those groups. The lending community unanimously supported the Agency's efforts to revise its guaranteed lending regulations, as did the large majority of Agency personnel and others who commented. However, there were some proposals, such as mandatory lender buyback of loans sold on the secondary market, that caused extensive concern. Numerous other comments were made requesting clarification, pointing out potential problems with the proposed rule or expressing personal opinion on a particular issue. The following is a discussion of specific comments, grouped into main subject areas, with Agency information providing clarification of some comments, adoption of others, and explanations for those that are not being incorporated into the final rule.

Mandatory Repurchase

The secondary market repurchase requirements proposed in § 1980.144 generated many comments. Of the 231 total comments received on the proposed rule, 105 expressed vehement opposition to the Agency proposal to require mandatory lender buyback of loans sold on the secondary market. The overwhelmingly negative comments were provided by farmer associations, secondary market purchasers, lenders and lender associations, including the American Bankers Association (ABA) and the Independent Bankers Association of America (IBAA). The proposed change was supported by two Agency employees, two Agency employee associations, and one bank. Most of the 105 negative comments indicated that the requirement seems to punish all participating lenders for the errors of a few. In summary, these comments said that this policy would cause irreparable harm to the fledgling secondary market for FSA guaranteed loans, and that lenders would be discouraged from making long term fixed rate loans. The commenters almost all agreed that it is essential for many banks to sell fixed rate loans because they do not have the ability to match loan funding to the loan term unless they structure the loans to be sold in the secondary market. By selling the loan, the bank is better able to match its interest rate risk. Also, by removing the loans from their books, they obtain liquidity to make more loans. According to the ABA, requiring the lender to buy the loan back is tantamount to restructuring them as full recourse loans. As a result, the ABA and IBAA are concerned that bank regulators may hold the full capital charge against these loans, thereby increasing the cost of capital for banks and causing higher interest rates for borrowers. Liquidity planning would be more difficult because banks would be uncertain of funding capacity if they must maintain reserves to potentially buy back loans that were sold.

As a result of these comments, the Agency has eliminated mandatory repurchase of loans sold, and addressed problems with repurchased loans in other ways. First, delinquent account servicing regulations in § 762.143(b)(2) now spell out that the lender consider repurchasing the guaranteed portion of the loan sold on the secondary market. Second, § 762.144(b)(1) requires the lender to consider the request according to the servicing actions that are necessary on the loan, and encourages lenders to repurchase the loan upon the holder's request. Third, direct consequences of a lender's failure to comply with § 762.144(c) were added at § 762.160(a)(2). This states that if the lender does not comply with requirements to reimburse the Agency for the repurchase within 180 days, the Agency will not execute the Assignment of Guarantee, and will prohibit the sale of future loans on the secondary market. Provisions were included for waiver of this prohibition if the lender is in compliance with an Agency approved liquidation plan. The 180 day liquidation or reimbursement requirement in §§ 762.144(c)(7)(ii) and 762.144(c)(7)(iii) were proposed in § 1980.144(c)(6) and no negative comments were received. Finally, the Agency has clarified proposed § 1980.106(g)(2)(ix) by requiring in § 762.106(g) that consistent deficiencies in servicing loans sold on the secondary market will be considered when reviewing PLP or CLP status as part of the assessment of the lender's abilities. The agency handbook will provide guidelines for implementing this requirement, such as considering whether those repurchases resulted in increased losses or servicing problems for the borrowers.

Reporting Requirements

Comments were received requesting the Agency specify the lender's reporting requirements in the lenders agreement. The lenders agreement for guaranteed loans currently references the Code of Federal Regulations (CFR) for all reporting requirements. The Agency recognizes that there are older loans with specific reporting requirements that may differ from the CFR, but they represent a very small portion of the existing portfolio. Several years ago it was recognized that different lender designations had different reporting requirements in the respective lender's agreements, that were inconsistent with regulations. It was because of this inconsistency that a change was made to have the new lender's agreement for guaranteed loans refer to the CFR. The comment is not being adopted.

A comment was received requesting that the Agency reduce lender status reporting from semi-annual to annual. The Department of Treasury requires the Agency to report the condition of its loan portfolio on a semi-annual basis. In the recent past, the Agency was able to reduce the burden of its guaranteed loan status report by allowing multiple loans to be included on one report and automating its input at the local level. The Agency will continue to explore areas where it can reduce reporting burdens; however, the comment cannot be adopted and the semi-annual status requirement has not been revised.

Servicing Actions

Numerous comments were received on the Agency's various proposals to authorize lenders to conduct servicing actions on their guaranteed loans. One comment felt that lenders should conduct all servicing actions and, to enforce this, suggested that the Agency provide for revocation of preferred or certified status when a lender assigns or contracts for applications or servicing with an outside agent. The Agency did not adopt this comment. Part of the reason for this rule is that the lending industry, especially in agriculture, is changing. For the Agency to continue to

encourage lenders to provide credit to family farmers and ranchers, it is critical that the Agency also change and adapt with the industry. The rule will maintain the provisions that exist today in that a lender has authority to contract with outside agents to service guaranteed loans. However, under the guarantee, the lender remains accountable for any actions of its agents or assignees that are inconsistent with the loan requirements, regulations and statutes.

Another comment was made requesting that lender servicing authorities be decided on a case by case basis, rather than basing this on the particular lender designation (Preferred Lender Program (PLP), Certified Lender Program (CLP), Standard Eligible Lender (SEL)). The comment was assumed to mean a loan by loan basis, since these statuses will be awarded on a per lender basis, as proposed. The comment is not being adopted because lender status designation will be based on its overall experience, including servicing, and expertise in conducting business with the Agency. The lender is responsible for servicing the loan in accordance with its agreements with the Agency. If a lender chooses to ignore these requirements, that noncompliance will result in the reduction or denial of a loss claim, should one be submitted. The Agency cannot assume that lenders will purposely ignore Agency requirements. The guaranteed loan is the lender's loan; lenders have requested the additional responsibility placed upon them in this rule with the full understanding that the Agency will hold them accountable for carrying out servicing in accordance with regulations and loan agreements.

A comment requested that the Agency require an annual loan classification of the guaranteed loan in order to determine the risk of loss. Currently the Agency uses existing loss rates on guaranteed loans in determining the subsidy cost for this program. Guaranteed loan loss rates have remained fairly stable since the farm crisis of the mid 1980's and, as a result, the Agency's current method of projecting losses, which does take into effect noted weather or related economic setbacks, is adequate for risk determination. Therefore, the Agency is not adopting the comment at this time.

Another comment requested that the Agency not allow retroactive servicing authority. In order to maintain consistency and provide a more simplified approach for Agency personnel, the rule must be retroactive. For example, Agency internal review procedures provide that 20 percent of an SEL lender's loans and 40 percent of a CLP lender's loan files will be reviewed annually. If the lender is worthy of an enhanced status, it will likely service all loans equally well. Requiring FSA field office review of 40 percent of a lender's loans made before a certain date and 20 percent of the loans made after that date would be burdensome and confusing.

A comment was made requesting that the Agency clarify that a line of credit balance can go to zero. In the past the Agency has heard concern from lenders that if a line is paid to a zero balance, then it is paid in full. This is not an Agency requirement and our interpretation is that a line of credit must be paid as its security is sold. The fact that a multiple advance note may be paid to $0 does not terminate it. Thus, no change was made in the final rule. The rule does not prohibit or require an annual balance of zero.

Negligent Servicing

The Agency received multiple comments requesting clarification of the definition of negligent servicing and how it would affect the determination of a loss payment as stated in § 762.149(c)(6). Negligent servicing was defined in § 1980.102(b) of the proposed rule as follows:

> The failure to perform those services which would be considered normal industry standards of loan management or failure to comply with any servicing requirement of this subpart. The term includes the concept of a failure to act or failure to act timely consistent with actions of a reasonable lender in loan making, servicing and collection.

In addition, the Agency's guaranteed documents under the full faith and credit provisions describe negligent servicing as those actions which a reasonably prudent lender will take in the servicing of a loan if such loan were not guaranteed. Moreover, failure to service a loan in accordance with the corresponding lender's agreements and Agency regulations can lead to reduction or denial of a loss claim due to negligent servicing. The Agency believes that to protect the government's interest, the definition of negligent servicing must remain flexible, and no change is being made.

Borrower Analysis

One comment requested that the Agency remove the requirement that all lenders complete a borrower analysis for chattel secured loans. Along this same line, a few comments suggested that the Agency delete the requirement for SEL to provide an annual statement of financial condition. Since chattel loan security often depreciates quickly, and is likely to deteriorate very quickly if an operation is struggling financially, the first suggestion is not being adopted. Contrary to the comment, the Agency has found that some level of security monitoring and financial performance measurement is performed by most lenders on their chattel secured agricultural loans. This analysis quickly identifies potential problems and can be used to correct the problem, change the operation or avoid future problems. It is a valuable decision making tool for any chattel secured loan and is not overly burdensome to lenders. As far as an annual balance sheet or statement of financial condition is concerned, this comment appears to address real estate loans and the SEL reporting requirements. While the Agency has removed this requirement for CLP lenders, SEL may be more inexperienced and may require a closer level of monitoring by the Agency. The Agency will only review a sample of an SEL guaranteed loan files in a given year; therefore a balance sheet in the Agency loan file will assist monitoring of these loans.

A comment requested that the Agency clarify the rule to state that any decision not to perform an annual analysis will be made after consultation with the Agency. This comment deals with proposed § 1980.141(d)(1) that allowed CLP lenders to forgo a complete analysis if there is sufficient financial strength to support the decision. The comment is not being adopted. A large number of comments indicated their support for the analysis requirements as proposed. The Agency's internal handbook will provide examples of financial strength factors that may be acceptable as reasons to waive the analysis. If lenders do not perform an analysis, § 762.141(d)(1) requires that the reasons be documented in their file and in their narrative, which is submitted to the Agency. FSA will review the narrative and the case file can be audited during a routine lender monitoring visit.

Consolidation

Several comments were received discussing loan consolidation. The Agency is also making some clarifications and minor modifications. First, the Agency has removed consolidation from the distressed servicing section. As used by FSA, consolidation is simply a combination of two or more similar performing loans into one loan and, thus, is not a distressed servicing action and is not useful as a tool to correct default. Therefore, in the final rule, proposed § 1980.145(b) has been moved from the distressed servicing section to § 762.146(e), other servicing procedures.

A comment requested that loan consolidation authority be eliminated. Loan consolidation is included as an authorized loan restructuring action in the Consolidated Farm and Rural Development Act and must be maintained as an authorized action. Moreover, loan consolidation is a standard industry practice and, in the interest of allowing lenders to conduct business as usual on their guaranteed loans, the Agency wishes to allow the practice to continue.

A comment suggested that the prohibition against consolidating loans made prior to fiscal year (FY) 1992 with those made after FY 1992, proposed in § 1980.145(b)(3), be eliminated. The proposed rule provided that consolidation of an FY 1991 loan with a post FY 1991 loan that did not have interest assistance would eliminate the ability to provide interest assistance for servicing on the consolidated loan. This result ensues because, under Agency budgeting procedures, the consolidated loan becomes an FY 1992 loan. The Budget Reconciliation Act of 1991 eliminated budget authority for interest assistance on FO loans and greatly restricted the Agency's ability to provide interest assistance for servicing actions by, in effect, making the awarding of subsidy on these loans cost prohibitive. To implement this authority and adopt the comment would result in a dramatic increase in the assumed cost of the guaranteed OL program and a commensurate decrease in its loan funds. The result would be a drastic reduction in the number of loans the Agency could guarantee and the number of farmers it would be able to assist. Therefore, the comment was not adopted.

Comments were received requesting that consolidations be limited to only those loans with the same percent of guarantee. The comment was not adopted; however, the final rule provides that when a new guarantee will be provided for a consolidated loan, the percentage of guarantee will be the lesser of the loans being consolidated.

Interest Rates

Comments were received requesting that the Agency allow for refinancing of existing guaranteed loans when the interest rate can be fixed. The proposed rule at § 1980.146(d) and the final rule at § 762.146(d)(3) provide for a change in rates from variable to fixed even if the loan is not delinquent. Therefore refinancing for this purpose is not necessary.

Substitution of Lenders

One comment was received requesting the Agency to clarify substitution of lenders. When a borrower wishes to move a guaranteed loan from one lender to another, or a lender wishes to sell a guaranteed loan to another lender, with or without the borrower's consent, FSA must process a substitution of lender. When a substitution occurs, the existing guaranteed documents must be assigned to the new lender. The Agency agrees with the comment that the lender substitution provisions in § 1980.105(c) were inadequate. The Agency has revised § 762.105 to clarify that the original lender and the Agency must concur with the substitution. If the original lender does not agree to assign their promissory note, lien instruments, loan agreements, and other documents to the new lender, then the substitution cannot take place and the new lender could only refinance the original lender. Refinancing would require the use of new loan funds and a guarantee fee. The Agency believes that the new authorities provided to lenders in this rule, such as partial release, subordination and change in interest rates will provide lenders with additional tools to continue to service existing borrowers, so that a substitution request will be less likely.

Partial Releases

Almost every comment received was in support of the Agency proposal to add partial release authorities to its guaranteed lending regulations. Additionally, many comments suggested that we, ''clarify that partial release authority would be at the field office level,'' and ''clarify when appraisals will be required for partial releases.'' Agency approval authorities for partial releases is an administrative matter and will be delegated through internal FSA directives. It is not included as part of this rule. Authority is likely to be extended to local offices. However, the Agency agrees that the proposed rule contained excessive application requirements for some types of partial releases. Therefore, § 762.142 has been revised to clarify what items are needed to request a partial release by CLP lenders and SELs. Similarly, the proposed rule is revised from requiring Agency concurrence to not requiring Agency approval when the security is being sold for market value, and the proceeds will be applied in accordance with lien priorities, when the security will be used as a trade-in or as a source of down payment funds for a like item that will be taken as security, or when the security item has no present or prospective value. Agency concurrence is required only when the proceeds will be used to make improvements to real estate in an amount equal to the amount being released, as stated in the proposed rule, security is being released without consideration but the loan to value after the release will be .75 (loan balance to collateral value) or less. The handbook will provide guidance as far as how proceeds would be applied on the loan, and how input may be requested when there is a question of whether reasonable value is being obtained for the security.

As for appraisals, the proposed rule at § 1980.142(d)(2)(i) provided that, for CLP lenders and SEL, the Agency would determine the need for any chattel appraisals and that real estate appraisals will not be required of the lender unless the Agency specifically requests them. Section 762.142(b)(2)(vi) provides that appraisals will be required when security is released without consideration. A suggestion that the Agency never require an appraisal for restructuring a loan, or for a partial release, was not adopted. Appraisals are not required to reschedule a loan, but since partial releases involve releasing loan security, an appraisal was not viewed as overly burdensome.

Subordination

Several commenters suggested that the Agency delegate to local county offices concurrence with a lender's request to subordinate a guaranteed loan. This comment is being partially adopted. The Agency has revised § 762.142(c)(3) to allow for the subordination of normal income security for the guaranteed lender or another lender to make an operating expense loan without Agency concurrence. The Agency agrees that the subordination of normal income security for a lender to make an operating loan is consistent with the mission of the Agency, to help borrowers progress to the point of obtaining credit without Agency assistance.

Some comments were received requesting that the Agency expand its subordination authority to include real estate loans. This comment was not adopted because, in most cases, subordination of guaranteed loan security increases the risk of loss to the Government. The Agency will continue to discourage subordination of real estate security and not provide regulatory approval authority at levels lower than the Deputy Administrator for Farm Loan Programs. See § 762.142(c)(3). If a request is received

that the State Executive Director feels is in the best interest of the Government and the borrower, it can be forwarded to National office for final consideration.

Other comments suggested that the Agency subordinate for tax exempt transactions. This comment is not being adopted. The Agency understands that tax exempt transactions often result in a lower interest rate for the borrower; however, has determined that a subordination of a Federal loan guarantee will not be provided in these types of transactions.

Emergency Advances

Overall comments were very favorable toward the proposal to add an emergency line of credit advance provision, although, several comments were received requesting that Agency approval be obtained on all emergency advances. The proposed rule did not specifically require Agency approval on emergency advances. The Agency recognizes that this may be confusing, so the suggestion to clarify approval is being adopted in § 762.146(a)(2), which will require CLP lenders and SEL to obtain prior FSA concurrence for emergency advances. PLP lenders will make these advances in accordance with the provisions of the PLP agreement. In all cases, the financial benefit to the lender and the Government must exceed the amount of the advance and the lender must document the financial justification for the advance.

Another comment requested that the Agency limit emergency advances to 10 percent of the line of credit ceiling or set a dollar limit. This comment is not being adopted. The Agency understands the comment's concern that there be a limit to the amount of the advances. However, if a specific percentage or dollar amount were established, it could have the opposite effect of what the comment intended. This policy would encourage lenders to assume 10 percent or a certain dollar limit is always acceptable. Therefore, FSA will not adopt this policy. The experiences supporting this proposal have shown that when this situation arises, the need is usually less than 10 percent of the line. However, in a few instances, a greater advance is required. In any case, the benefit to the lender and the Government must exceed the advance. For example, if a lender with a $400,000 line of credit advances $20,000 as an emergency advance for irrigation and saves a crop, the Government may pay $20,000 in losses on the loan. But had the crop not been watered, it may have been a total loss and the Agency loss may have been $400,000. In this example, the benefits derived obviously exceed the advance amount.

Several comments requested that the Agency clarify the emergency advance lien priority as it relates to the guaranteed loan and how it is paid, and a few comments indicated confusion regarding the difference among an emergency advance, protective advance, and an additional loan. These comments are addressed in § 762.146(a)(3)(iv) by requiring that the emergency advance must constitute an advance against the line of credit and be secured by the same lien instruments. Emergency advances are not a separate loan, but part of the guaranteed loan. To subordinate this advance in favor of the lender on a non guaranteed basis, as was suggested by some, would provide an effective 100 percent guarantee of repayment of the advance, because the emergency advance would be paid in full before application of payments to the line of credit. Because the emergency advance is necessary for the guaranteed loan, the lender should share the risk in proportion to the guarantee. Emergency advances are similar to protective advances in that they are made to protect security from being lost, constitute an obligation under the promissory note, and cannot be made in lieu of a new loan. They differ from protective advances in that emergency advances are made only in the case of a line of credit to protect, harvest or market only normal income security, when the borrower is not in liquidation. Protective advances are made to protect any type of security for a multitude of purposes, when a loan is in default and liquidation is likely.

The Agency received a comment requesting expansion of the lender's authority to make emergency advances in situations outside the limitations placed in the rule. This comment is not being adopted. The Agency does not agree that there are any circumstances justifying further exposure on the guarantee, other than when loss of crops or livestock is imminent, the advance is for authorized operating loan purposes, and the benefit derived will exceed the amount of the advance. These situations are covered by § 762.146(a)(3).

Restructuring

In the proposed rule, only SELs required Agency approval when restructuring a guaranteed loan. CLP and PLP lenders would not require Agency approval with restructuring actions, except for loan writedowns. While a majority of the comments were in favor of the rule, several commenters felt that Agency approval of all restructuring actions was necessary to assure that the restructuring is in accordance with regulations. This suggestion was not adopted. PLP and CLP lenders are more experienced lenders and they are more familiar with Agency requirements. Still, they must restructure loans in accordance with the minimum Agency requirements for restructuring for all lenders. Lenders who do not restructure in accordance with minimum regulatory requirements risk not being paid in the event of a loss. Furthermore, Agency approval of a lender's restructuring action does not endorse servicing that occurred prior to the restructuring, nor does a note's compliance with Agency regulations ensure that the restructuring was completed correctly. Agency officials often do not have the time to thoroughly analyze all facets of a lender's restructuring request, and lenders and their associations have suggested that Agency employees be less involved with approval of a lender's actions. Therefore, the Agency is placing this responsibility upon the more experienced lender.

A similar comment requested that the Agency require PLP lenders to submit a credit analysis prior to Agency approval of rescheduling. PLP lenders have significant agricultural lending experience in addition to their familiarity with Agency guaranteed loan programs. Having the Agency review the PLP lender analysis, in most instances serves no useful purpose. PLP lenders know how to analyze credit and make loan restructuring decisions based upon those analyses. In addition, they are required to have documentation of their analysis in the file. If a PLP lender does not take those actions required by the lender's agreement and Agency regulations prior to restructuring, in the event of a loss, the lender's loss claim under the guarantee may be reduced or denied.

One comment requested that the Agency make a decision on the PLP or CLP lender's servicing requests within 14 days, rather than state that the Agency will ''consider the request.'' Proposed § 1980.145(a)(1)(i)(C) states that only SELs are required to obtain Agency approval and the Agency must notify the SEL within 14 days of the request. The comment apparently mistook the Agency's discussion of proposed changes in the rule, which used the word ''consider'', for the regulatory requirement.

Another comment suggested that the Agency not be required to act in 14 days if the borrower has a direct loan that is being serviced under the provisions of 7 CFR part 1951, subpart S. This comment is also apparently a

misunderstanding, because the rule stipulates certain items to be submitted to the Agency for approval before the 14 day period begins. If a guaranteed borrower is having direct loans rescheduled by the Agency, much of the required information, such as a feasible plan, cannot be provided by the lender until direct loan servicing is complete.

One comment requested that the Agency require the lender to account for security and provide a loan history as part of any loan restructuring action. The Agency believes that the adoption of this suggestion would not provide additional assurance that the loan was adequately serviced. The existing rule states that a final loss claim may be reduced, adjusted, or rejected as a result of negligent servicing after the concurrence with a restructuring action. The intent of this statement is to remind SELs that Agency concurrence with an action does not mean that all actions up to that point regarding servicing are satisfactory. The statement in the rule also applies to CLP and PLP lenders, who do not require Agency concurrence prior to restructuring.

Balloon Payments

Several comments were received requesting the Agency allow for the reamortization and restructuring of loans with a balloon payment in the repayment schedule. The Agency agreed to add a regulatory prohibition against rescheduling loans with balloon payments several years ago in response to a recommendation of the USDA Office of Inspector General (OIG). OIG determined that many Agency guaranteed loans were being restructured with no realistic planned repayment when the balloon payment came due. As a result, the borrower did not receive any real benefit and, in many cases, the balloon payment was used to simply put off the inevitable. This caused continuing difficulties for the borrower and, ultimately, a larger loss to the Agency. However, the Agency does recognize the need for the lender to have the flexibility of being able to restructure a loan with a payment schedule other than equal amortized payments. Thus, § 762.145(a)(3) allows a loan to be rescheduled with uneven payments provided the borrower projects a feasible plan for the upcoming year and can reasonably demonstrate that when the installments increase they will be repaid without further restructuring. The Agency intends that unequal installments will coincide with the need to re-establish an enterprise or an unusual cash flow cycle.

Prohibition of Advances on Rescheduled Lines of Credit

One comment requested that prohibiting advances on rescheduled lines of credit should not apply to those lines of credit already in effect. The comment suggested that FSA ''grandfather in'' all existing lines of credit to allow them to be rescheduled, and permit advances on the difference between the line maximum and the rescheduled balance. FSA's intent in § 762.145(b)(1)(ii) is that, on the effective date of this rule, the change will apply to all lines of credit except those that have been previously restructured. To adopt the comment's suggestion would require gradual implementation of the restriction for up to five years on existing lines of credit. This would create problems in administering the restriction. Therefore, the Agency will not adopt this suggestion for all lines of credit. While the final rule will allow rescheduled lines of credit with remaining balances to be re-advanced, on the effective date of this rule, the Agency will not allow advances on lines of credit where restructuring has not already occurred.

Debt Writedown

Several comments were received from Agency field offices concerning the Agency's debt writedown provisions proposed in § 1980.145(e). One comment was received suggesting that the Agency require an OL loan that is being written down to be amortized over a minimum of 10 years, as opposed to the 5 year minimum that was proposed in § 1980.145(e)(5). The Agency understands the commenter's concern that the amount written off and the resulting loss claim payment is higher when the loan has a shorter term. However, the Agency intends to be flexible in those situations where the life of the security is less than 10 years and it is the lender's policy to not restructure beyond the life of the security. This may provide an incentive for lenders to provide a writedown to a farmer that needs one to stay in business.

Another comment requested that the Agency require the lender to take a lien on all assets when writing down a guaranteed loan. The Agency considered this option; however, it was not adopted because it would create future credit problems for the operation. The Agency felt that this situation should be handled on a case-by-case basis, with guidance provided in the Agency handbook and in consideration of the lender's internal policies. Also, § 762.145(e)(9) does require a cross collateralization of security if the borrower has other guaranteed loans that are not secured with the same security as the loan being written down.

Several comments expressed concern over the 20 year minimum amortization for an FO loan that is being written down. For example, there is concern that if there are only 19 years left on a 40 year FO loan, in accordance with § 307(a)(1) of the CONACT, it cannot be reamortized to exceed 40 years from the original date of the loan. The Agency has written § 762.145(e)(5) to state that the loan will have a 20 year term minimum, unless the remaining term exceeds the statutory term. If the term cannot be extended to 20 years, it will be extended to the maximum term available under the CONACT.

Servicing Fees

One comment requested the Agency not pay the holder a servicing fee when repurchasing a guaranteed loan from the secondary market. The proposed rule at § 1980.144(b)(3) stated that the Agency will not reimburse the lender for any servicing fees which have been assessed to the holder. The comment is being adopted in § 762.144(b)(3) of the final rule by adding the words ''after the Agency repurchase.''

Bankruptcy Costs

The proposed rule at § 1980.148 contained several revisions to the Agency's loss claim procedures with regard to the costs incurred when a borrower files for protection under the provisions of the bankruptcy code. The most consequential of these changes is the reversal of current policy prohibiting the payment of legal fees and appraisal fees in a bankruptcy. A large number of comments were received on this proposal, with the majority in favor of the change. However, several comments were received requesting that these fees not be covered or that they be covered at a reduced percentage. The comments suggest that inclusion of these fees in the lender's guaranteed loss will reduce a lender's incentive to minimize these expenses and exacerbate the Government's losses on these loans. As stated in the discussion of this change in the proposed rule, the Agency believes that payment of the guaranteed percentage of legal fees in a bankruptcy is a legitimate and logical extension of current policies on the payment of a lender's losses. Also, this change will benefit more family farmers and ranchers by encouraging lenders who have not previously participated in the guaranteed loan program to now make loans. Many lenders have said that one

of the reasons they do not participate, or participate at a minimum level in the Agency's guaranteed loan program, is because the Agency does not cover all fees with the guarantee. Maintaining the reasonableness of legal fees is an issue that will have to be dealt with through appropriate guaranteed loan portfolio management. The Agency will retain the option of scrutinizing a lender's claimed expenses and reducing a loss claim request when a lender has not monitored expenses and has allowed unfettered fees to accumulate.

Where appraisals are concerned, the court often requires the lender to have the collateral appraised, or at least share in the cost of an appraisal. The Agency allows appraisal costs in a liquidation loss claim, and this change will make bankruptcy procedures more consistent. More importantly, the coverage of the cost of an appraisal will assure that, in bankruptcy cases, accurate representations of security values will be obtained.

Several comments suggested modifications in the final rule, such as limiting coverage of lender legal fees to 50 percent, making sure that the fees are not excessive, clarifying what expenses are reasonable, requiring prior approval of estimated legal fees, and not guaranteeing legal fees at all. One comment suggested that covering legal fees is detrimental to the borrower. The Agency will only guarantee reasonable legal fees. We believe, and lenders have stated, that they are more likely to aggressively act in bankruptcy cases if they know that such costs are covered by the guarantee. While a lender's aggressive action in bankruptcy may be viewed as adverse to a borrower, the borrower's interest is protected by the court. The Agency's exposure on the guarantee is with the lender. The Agency believes it is unlikely that a borrower will lack due process as a result of covering legal fees under the guarantee. Since the Agency believes that the commenter's suggestion embellishes the likely effect of the rule, it will not adopt the comment. It is in the Government's interest to assure that the lender takes every action to protect its loan security and ensure that losses are minimized. The overriding consideration is that more lenders will participate in the guaranteed loan program, increasing credit availability and providing a benefit to family farmers and ranchers.

The suggestion that the Agency pre-approve estimates of fees was also not adopted. Agency approval of an estimated expense is time consuming and burdensome on both the Agency and the lender and serves no purpose other than to have an estimate which may be higher or lower than the actual amount.

Also, in response to another comment, the Agency will guarantee attorney fees based upon the assumption that lenders will be using sound, licensed, professional legal counsel when involved in such an action. Losses incurred as a result of servicing deficiencies may not be paid under a loss claim. Such deficiencies may include the failure of a lender's legal counsel to represent its interest by not filing objections where appropriate or other actions.

On a related subject, a comment suggested that FSA guarantee legal fees incurred outside of bankruptcy, as well as fees incurred as a result of lender liability suits brought by the borrower. For the former, the rule provides that lenders subtract reasonable liquidation expenses from the proceeds received from a liquidation action. However, lender liability suits are actions specific to the relationship between the lender and the borrower. As such, they are recognized as a risk of business for which the Government is neither responsible, nor prepared to assume responsibility for under the guarantee.

This rule does not expound on what the Agency regards as reasonable or frivolous expenses as suggested by several comments. The Agency acknowledges the potential for inconsistency in how ''frivolous'' or ''unreasonable'' is determined. By ''frivolous'', the Agency is referring to those expenses which, in its opinion, the lender's attorney cannot legitimately claim, or the lender cannot legitimately request coverage of by FSA. The decision of what is ''reasonable'' is situational. The Agency believes that the terms ''frivolous'' and ''unreasonable'' are sufficiently precise to establish standards of ''reasonable'' expenses. The standards are based on each case considering the legal costs in the locality, the size of the debt, the type of security, and the amount of opposition encountered. The expenses will be adjusted based on a comparison of each of these items for similar cases in the area. Guidance on review and approval of bankruptcy loss claims will be included in the Agency field office handbooks. Current policy of not covering the lender's in house, or normal operating expenses, will continue. See § 762.148(b)(1)(i) of the final rule.

Default Meeting

One comment requested that the Agency require its personnel to be included in a meeting described in the proposed rule at § 1980.143(b)(3). The Agency does not feel that it is necessary to attend the meeting between the lender and the borrower to discuss the loan delinquency. Agency personnel have the option to attend the meeting, if requested by the lender, if they are unsure what actions may or may not jeopardize the guarantee. However, the lender often needs to act quickly and there may be scheduling conflicts. Placing Agency employees at the meeting can leave the impression with the borrower that Agency guidance regarding regulations means the FSA employee is making the decisions. The loan is the lender's and it is the lender's responsibility to service it.

Liquidation

Several comments were received regarding the time frames lenders are required to meet in a liquidation action. A similar comment suggested that the Agency not require the consideration of interest assistance prior to liquidation. Both comments suggest removal of proposed § 1980.143(b)(3)(v). The reasons for the suggestion are understandable, as nothing is accomplished by the required 60 day waiting period. Nonetheless, lenders who participate in the Agency guaranteed loan program are required by § 351(g) the CONACT to wait 60 days after considering interest assistance before initiating liquidation. However, if restructuring is not an option and liquidation should proceed, the lender can conduct preliminary activities to liquidation, to expedite recoveries after the 60 day period has passed. Also, if the borrower waives interest assistance, liquidation may begin immediately. This rule includes clarification of how interest assistance is considered in conjunction with a distressed servicing action and the FSA handbooks will include additional guidance on how this provision is to be dealt with. The Agency believes the other time frames for liquidations provided are reasonable considering the complexities involved in any liquidation action.

A similar comment asked the Agency to clarify how the borrower's eligibility for interest assistance is automatically determined upon receipt of the default status report. As stated above, interest assistance will not cure a default, except as part of a rescheduling proposal. In response to this comment, the Agency added language to § 762.143(b)(iii) to state that lender's consideration of a borrower for interest assistance will be included on a default status report. This amended procedure will advise the Agency that interest assistance has been considered, and to assure that the

interest assistance has been considered in all cases.

Liquidation Plans

Several comments requested that the Agency not require PLP lenders to submit liquidation plans, while other comments requested that the Agency not require lenders prepare liquidation plans. The first suggestion is being adopted and § 762.149(b)(2) is revised so that PLP lenders are not required to submit liquidation plans unless the lender's agreement requires it. PLP lenders will be required to have a plan developed for liquidation, although each PLP liquidation plan may differ slightly, as spelled out in the PLP agreement. Agency monitoring of default status reports, which will contain previous actions and planned actions, will allow Agency officials to monitor PLP progress on liquidations. As far as non PLP lenders are concerned, the Agency feels that a liquidation plan is necessary to protect the Government's interest, and provide guidance on the status of defaulted guaranteed loans. Plans can be brief as long as they include the items required to be addressed by § 762.149(b). Agency personnel must be kept informed when a guaranteed loan moves to the liquidation stage. The liquidation plan's preparation assures the Agency that repurchase from a secondary market holder has been considered and advance preparation to minimize losses has begun. Also it serves to assure the lender that the Agency is in agreement with its actions, so misunderstandings may be avoided.

The Agency was requested not to specify how estimated loss payments will be applied. The comment stated that since interest accrual ceases upon payment of the estimated loss claim, it does not matter how the lender applies the loss claim payment. The application of the proceeds becomes insignificant because interest accrual on the defaulted loan ceases. The Agency is adopting this comment and has amended § 762.149(d)(2) accordingly.

The Agency was also requested to respond to lenders' liquidation plans sooner than 30 days. The Agency agrees that there is little justification for the 30 day period since the Agency reply requirement is based on a complete plan and the Agency must simply respond with an approval, request for clarification or additional information. As a result, § 762.149(c)(2) was revised to state that the Agency will respond within 20 calendar days; otherwise, the lender may assume the plan is approved and proceed with reasonable actions to protect its interest and liquidate the loan.

A commenter suggested that the Agency hold a lender harmless for liquidation actions taken prior to FSA concurrence as long as they are prudent and reasonable. The standard to which a lender will be held is ''reasonableness.'' The Agency will not penalize a lender in this situation for reasonable actions. This comment will be addressed further as an administrative matter in the Agency handbook, providing that loss claims will only be reduced as far as the lender's actions contributed to the loss.

Several comments requested that the Agency not require a liquidation value appraisal be provided with a liquidation plan and another suggested requiring a value in between the liquidation value and the market value to be bid at any forced security sale. The comment's suggestion that all estimated losses be based upon a market value appraisal, less estimated liquidation costs, is being adopted. The Agency agrees that the ''liquidation value'' term is confusing when used in context of liquidation plans and estimated loss claims. Section 762.149(b)(4) has been revised to require the lender to provide a net recovery value determination, defined in the final rule as the difference between market value and anticipated selling expenses. At a minimum the lender must bid the lesser of this value or the unpaid guaranteed loan balance at any forced sale. See § 762.149(h). This complies with standard industry practices and the Agency sees no benefit in bidding higher than net recovery value at a distress sale. Another comment on this section requested that the Agency be flexible on the requirement to obtain a balance sheet as part of the liquidation plan, as it may be difficult for a lender to obtain a current balance sheet from a distressed borrower. The comment is not being adopted; however, clarification of expectations when a borrower is uncooperative has been added to § 762.149(b)(1). The Agency would expect the lender to provide the most recent financial information available in these instances.

Protective Advances

Comments were received requesting the Agency raise the limits on protective advances proposed in § 1980.149(e)(1). The proposed rule required that protective advances in excess of $500 for SELs and $3,000 for CLP lenders must be approved in writing by the Agency. These limits have been in place for several years and the Agency agrees that costs have increased and these limits may be outdated. Therefore the rule has been revised to raise the limits for CLP lenders to $5,000 and SELs to $3,000. The Agency believes that these limits are sufficient for advances that a lender must make before receiving a written response from the Agency. PLP lenders will make protective advances in accordance with the PLP agreement. These limits do not apply to emergency advances described in § 762.146(a).

Net Recovery Value

The Agency received a comment suggesting that it amend the definition of net recovery value to reflect the difference between the market value and the lender's cost of liquidation, instead of the Government's cost. We have adopted this suggestion and made the change in § 762.102(b).

Another comment suggested the Agency define net recovery value. The proposed rule at § 1980.102(b) did define net recovery value; however, further clarification was needed regarding the term ''estimated future value'' which was used in the definition. Section 762.102(b) has been revised to replace that element of net recovery value with ''market value.'' This value, less the lender's estimated cost associated with the disposal of the property, is the net recovery value. Further guidance on net recovery value calculations and their use in loan servicing actions will be provided in FSA handbooks.

Interest Accrual

One comment requested that the Agency clarify interest accrual on loss claims. The suggestion is being adopted. While the rule clearly states that interest accrual will cease upon the payment of an estimated loss claim, the comment is concerned about a case where no loss is expected, but there is a loss after final disposition. Section 762.149(d)(2) requires the lender to provide the Agency a loss estimate of zero, whereupon interest accrual will cease on the defaulted loan. This will encourage the lender to liquidate the account expeditiously and provide the Agency with a record of a liquidating account. The lender may collect all manner of late charges, fees, costs, and interest on the loan up to the point it is paid in full, as long as security proceeds are sufficient to pay the entire debt. If a loss occurs upon submission of the final claim, the guaranteed percentage of the loss will be paid; however, interest that accrues after receipt of the no-loss estimate will not. This is consistent with the handling of those accounts that have an additional final loss, not including interest accrual which ceased

upon the Agency's payment of an estimated loss claim.

Final Loss Payment

Several comments suggested clarification of the Agency's policies and procedures on payment of final loss settlements contained in proposed § 1980.149(i). One comment dealt with losses when a lender takes possession of real estate collateral. The comment requested that the Agency allow lenders to request a final loss payment upon the borrower's transfer of the security, provided the lender receives the full appraised value of the security. A related comment requested that all final losses be based upon the ultimate disposition of collateral. Agency experience and common sense, as discussed in the proposed rule, indicates that few lenders opt for final payment prior to ultimate disposition. In order to establish consistency in the final payment process and avoid the misunderstandings that have occurred, this seldom used option was eliminated.

One comment requested the Agency clarify proposed § 1980.149(i)(6) as to how the deduction for the value of security that has not been accounted for will be calculated. Failure to obtain a lien on, monitor, inspect, or properly apply proceeds from the sale of collateral in most cases will be used as a reason for a reduction or denial of a lender's claim under a guarantee due to negligent servicing. However, the fact that there is unaccounted for security will not necessarily cause a reduction because of negligent servicing. The decision will be based upon the lender's servicing and collection efforts. Also the Agency will not penalize a lender for servicing deficiencies that did not contribute materially to a loss. The Agency has clarified this provision in § 762.149(i)(6) as suggested.

Future Recovery

Another comment requested that the Agency include specific procedures and time frames for additional collection actions after a guaranteed loan loss claim has been paid. The proposed rule at §§ 1980.149(j) and 1980.141(f) outlined what the lender's responsibility is for future collections. The rule proposed submission of an annual report on all unsatisfied accounts for three years following payment of a claim. Sections 762.149(j) and 762.141(f) adopts these provisions unchanged. Further explanation of the administrative aspects of the rule will be provided in the Agency handbook.

Release of Liability

One commenter questioned why the Agency is giving the lender release of liability authority. The meaning of the comment is unclear since §§ 1980.146(b) and (c) of the proposed rule provided for Agency approval of release of liability in the case of SEL and CLP lenders. Also, as outlined in the proposed rule, releases of liability will only occur in cases of divorce, bankruptcy, withdrawal from the operation (without retention of any farm assets), and liquidation, and will be based on the strength of the remaining liable party. The Agency estimates that this new authority will not impact current loss levels.

Termination

One comment was received requesting that the termination of guaranteed loans be expanded to include the denial of loss claims upon written notification by the Agency. The comment is not being adopted, as such a provision is included in the guarantee document itself. Also, termination of the guarantee automatically occurs upon the denial of a loss claim after all appeal rights are concluded. Requiring Agency personnel to specifically state this in a letter is an administrative issue that will be covered in the Agency handbook. Similarly, it was suggested that the Agency require lenders to return guarantees marked paid in full on all paid guaranteed loans. The Agency has revised § 762.149(i)(11) to require this.

Interest Assistance

On February 28, 1991, Farmers Home Administration (FmHA) published an interim rule [56 Fed. Reg. 8258–8272] with a comment period ending April 29, 1991. The Omnibus Budget Reconciliation Act of 1990: (1) increased the potential level of government reimbursement for interest rate reductions made by lenders on guaranteed farm loans; (2) extended the potential term of interest rate reduction on guaranteed farm loans; and (3) extended authorization for the subsidy program through September 30, 1995. On February 10, 1996, it was extended until November 30, 2002. See Pub. L. 104–105 § 220. It was necessary to implement this rule upon publication to provide assistance to a large number of farmers who would otherwise be unable to obtain sufficient credit to operate in 1991. In response to the interim rule, 175 respondents from 24 States and the District of Columbia commented in writing. Many of the respondents' letters contained comments on a number of the sections of the interim rule. Comments were received from individuals, Agency employees, interest groups, lenders, bankers associations, Farmer Mac, Members of the Congress, and the Department of Treasury. Several comments complimented various segments of the program.

There were four comments on the consideration of significant non-essential assets. Of those, one comment recommended that significant non-essential assets be made available for security but that their sale not be forced or assumed in cash flow. A second comment suggested that all members of entities be required to pledge all non-essential assets. Two respondents requested that borrowers be required to liquidate significant non-essential assets before the interest assistance loan is closed or before the subsidy is continued. In the interim rule, cash flow is calculated based on the assumption that significant non-essential assets will be sold. There is no requirement to actually sell non-essential assets if the obligations can be met otherwise. The Agency has adopted the recommendation to continue with the policy of the interim rule, with a clarification in § 762.150(b)(3) to consider non-essential assets of entity members. FSA has a long-standing policy not to provide subsidized credit to enable applicants to retain assets which are not essential to the farming operation.

The interim rule provided for a floating maximum subsidy rate not to exceed 4 percent. Two respondents commented that it was clearly the intent of the legislation that the 4 percent subsidy be made available to all eligible borrowers based on need. One comment suggested that the maximum rate available be reduced in stages over the life of the agreement.

Under the interim rule, the level of interest assistance to be received is determined and set at .25 percent increments. One hundred fourteen comments objected to the use of the increments. The Agency agrees that projected farm budgets cannot be as precise as the .25 percent increment required and implied. Granting interest assistance at the 4 percent level in every case would give recipients subsidy for their need, and increase their probability of remaining a viable farming enterprise. On December 17, 1993, the Agency published a change at 58 FR 65871,65887 adopting the recommendation to determine and set interest assistance at 4 percent in all interest assistance situations which require any level of subsidy. This is adopted at § 762.150(d)(1)(i).

The Agency changed from incremental amounts of interest assistance to a straight subsidy amount of 4 percent on December 17, 1993. The Agency is considering whether alternative methods such as a return to the use of increments in determining subsidy levels would be appropriate. During the review of the regulations, questions were raised as to whether alternative subsidy calculation methods would produce a cost savings and increase the number of producers that could be helped. By using incremental subsidy, rather than a 4 percent subsidy, the Agency might be able to target the amount of interest assistance subsidy paid more closely to borrower need, reducing the assistance in some cases, so that more qualifying producers could be assisted with the available subsidy. To assist us in considering alternative proposals, we are specifically asking for comments regarding the use of incremental subsidies, at what increments should the subsidy be established, and any other alternative methods of establishing the subsidy rate.

The interim rule provides for interest assistance payments to be made to lenders on the basis of claims which can be submitted only once annually. All comments on this issue wanted to be able to submit claims more often than once annually. Various methods of payment were suggested by the comments. Based upon the comments received, the Agency believes that more frequent claims may be conducive to lenders sale of the guaranteed portion of loans with interest assistance into the secondary market and may allow the lender to offer a slightly lower interest rate to the borrower. However, the lender's increased earnings would be minimal and may or may not be passed on to the borrower in the form of lower rates. Because Agency resources are limited, processing frequent (i.e., monthly) claims would overload Agency offices. Therefore, the Agency has decided to continue to allow claims only at 12-month intervals.

All comments regarding the cap on variable interest rates were in opposition to it. The Agency has adopted the recommendation to remove the cap on variable interest rate increases to be consistent with other loan programs and the industry standard. See § 762.150(b)(7).

The interim rule required that the need for interest assistance be reviewed annually, and the level of assistance be adjusted if necessary. One hundred twenty-one separate comments requested various changes in this requirement. Most of the comments recommended the review period be increased to 2 or 3 years, several recommended a 5 year interval and others objected the review, but offered no alternative. The Agency acknowledges that periodic reviews place a burden on the lender. However, this requirement was established as a control to prevent borrowers whose financial position improves from receiving unneeded subsidy in later years of the loan. The Agency has considered the comments and believes that less frequent reviews will create a significant risk of payment of excess subsidy. Therefore, the Agency has decided to not change the review period.

Eight comments were received regarding the minimum loan terms for interest assistance. Minimum terms are specified as a safeguard to prevent use of a reduced payment term which would increase installments so that an applicant or borrower, who would otherwise not need interest assistance, might qualify. Two of these comments suggested that existing loans whose original terms met the requirements, even though they do not meet them now, should qualify for interest assistance. Other comments suggested permitting a balloon payment in 5 or 10 years. Balloon installments place additional risk on the long term viability of the operation and are not acceptable for borrowers in need of a subsidy. The Agency has changed § 762.150(b)(1)(iii) to consider the 20-year requirement on farm ownership and soil and water loans secured by real estate, to begin on the loan closing date (on loans with existing guarantees) instead of the effective date of the interest assistance agreement. This is consistent with the intent of the provision, and reduces the cost and paperwork for borrowers who had a loan with terms of 20 years or more, but have less than 20 years remaining.

The interim rule required that requests for interest assistance on annual operating loans and lines of credit be accompanied by a monthly cash-flow budget. The Agency received seven comments in opposition to the requirement. The purpose of this budget is to accurately estimate the maximum credit needs of the borrower and the average loan balance. This is a fundamental part of sound credit analysis. Therefore, the Agency is not adopting this suggestion, since it would reduce the quality of the analysis.

Three comments discussed the issue of the inadequacy of compensation for lenders for the extra work required by the subsidy program. Two of them suggested higher interest rates or assessing fees to the borrower as compensation. One comment suggested that the Agency pay a fee to the lender to cover additional costs. It is not reasonable to expect that borrowers whose financial position allows them to qualify for the subsidy program to afford the additional cost for payment of a fee. Section 351(c) of the CONACT prohibits the Agency from paying a fee in addition to 100% of the cost of interest reduction. Therefore, the Agency has not adopted these suggestions.

One comment requested clarification of the penalty for lenders who fail to complete annual analyses or submit claims within the 60-day timeframe. The Agency is concerned that the analysis needs to be tied to the claim to encourage timely analysis and planning. Section 762.150(d)(1)(ii) has been revised to encourage filing within 60 days and state that failure to submit a claim within 1 year will result in forfeiture of the payment.

Several comments requested that the Agency establish timeframes to process claims. The Agency agrees that claims should be processed in a timely manner. Suggested timeframes have been established in the agency handbook.

The interim rule limited the term of interest assistance to 10 years on each loan. Eighty-seven comments were received on this subject; one suggested that we should make the term of eligibility limitation per borrower rather than per loan, two suggested allowing interest assistance for the life of the loan, one was concerned that the period of assistance is too long, and 83 were pleased to see the increase from 3 to 10 years. The program is designed to provide temporary assistance to borrowers. It is most reasonable to tie the eligibility period to the borrower rather than any particular loan. Tying eligibility to any loan provides an almost unending subsidy as borrowers can receive additional loans and continue the subsidy almost indefinitely. The Agency adopted the recommendation to limit the term of interest assistance to 10 consecutive years per borrower.

The interim rule required a positive cash flow (with a 10-percent margin) to be eligible for interest assistance. This subject drew a variety of comments from 94 respondents. A few comments were in support of the interim rule while the vast majority were opposed to various aspects of the margin requirement. Recommendations ranged from deleting the requirement altogether to allowing a greater than 10-percent margin. Many respondents suggested allowing continuation of interest assistance or applying subsidy to existing guaranteed

loans, with no margin requirement. The Agency continues to believe that as a cash flow lender, a margin of at least 10 percent of the term debt payments is essential for an applicant to have reasonable prospects for success. See the definition of positive cash flow contained in § 762.102, which is required in § 762.150(b)(4)(i) for interest assistance on new guaranteed loans. However, it also agrees that withdrawing or prohibiting subsidy in cases where the Agency already has exposure only increases that exposure and is not consistent with program objectives. The Agency partially adopted this recommendation by deleting the requirement for a margin on continuation requests or existing loans. See § 762.150(b)(5)(i).

The interim rule provides for the level of need for subsidy to be based upon a projected cash flow. One comment suggested that a second needs test should be calculated at the end of the claim period based on the borrower's actual performance, to determine the level of subsidy to be paid. In order for the borrower and lender to make sound business decisions, they must be able to project the effective interest rate for the next plan period. Since this recommendation would reduce the ability to plan, the Agency is not adopting it.

One respondent requested clarification on the method of performing the needs test on multiple loans. This clarification has been provided in the Agency handbook and lender manual.

One comment suggested that the definition of ''positive cash flow'' be added. An explanation of positive cash flow has been added in § 762.102.

Two respondents requested guidance on accounting for the subsidy portion of the interest payment. This is a management decision to be made by each individual lender and should not be dictated by the Agency. Therefore, no change is made.

One respondent requested clarification as to whether ''other debt'' is to be considered for restructuring before interest assistance is to be considered. This is not a requirement but an option under the interim rule. No change is being made.

Many of the respondents who sent similar letters, recommended that the Agency not cancel interest assistance due to a court ordered reduction in the interest rate. Such a policy could result in having to process two claims. For administrative simplicity, the Agency prefers that the lender request the interest reduction through the loss claim process rather than through an interest assistance claim. The interest assistance agreement is changed to clarify this point. The interest assistance agreement will also be revised for administrative simplicity, to say that interest assistance will be canceled when a debt write down is approved.

One comment requested clarification that lenders can reduce their interest rate voluntarily in conjunction with interest assistance. This has always been the policy and clarification is added to § 762.150(b)(7).

One comment feels that the proposed rule contains more stringent rules and will hinder the ability of Agency direct loan customers to graduate to guaranteed loans. The Agency feels that the new program is less stringent and should be more appealing as several of the changes being made with this final rule will be more beneficial to the loan applicant and lender. Examples of these changes include a simplified claim process, Agency timeframes to process claims, reduced margin requirements for servicing, and elimination of .25 percent increments.

One respondent commented that the Agency does not seem to trust the commercial lender in implementing the interest assistance program. The regulations of this program reflect a balance of internal controls to protect the Government's interest, with a workable program to benefit the borrower and to appeal to lenders. No change will be made.

One comment suggested that mid-year adjustments of the subsidy level should be available. Such an adjustment would not be significant to either the lender or the borrower, especially since elimination of the .25 percent increments, and would add to the administrative time required of all parties. No change is made.

Thirty-four comments recommended limiting a borrower's effective interest rate to a level no lower than the limited resource rate for the same loan type. The limited resource rate is the lowest rate charged for Agency direct loans. However, the standards for the guaranteed program do not correlate with the direct loans program. Such a limitation would be administratively burdensome to the lender and would complicate the program. Therefore, the Agency is not adopting this recommendation.

Seventy-nine respondents, requested that the Agency adopt a policy that no guarantee fee will be charged for loans in which a majority of the funds are used to refinance Agency loans. This would encourage graduation of borrowers from the direct loan program to the guaranteed loan program. The Agency implemented this recommendation without publication in 1993 and in § 762.130(d)(4).

Eighty-three comments, stated the amount of paperwork and preparation time involved with the interest assistance application process will prove too difficult and costly for borrowers and banks and will decrease participation in the program. No specific changes were recommended. Every effort has been made to minimize paperwork, while protecting the interest of the Government and meeting statutory requirements. Many changes that are being made in this rule will reduce the paperwork associated with interest assistance loans. Examples include a much less complex claims process, simplified needs test, and elimination of an amortization schedule for loans with equal payments. The Agency will continue to accept comments on specific changes which will result in a burden reduction.

Twenty-two comments requested that consideration be given to an Agency developed software program that would complete forms associated with interest assistance. Development of software for public use is outside the scope of the Agency's current focus. Commitment of time necessary for development, service and maintenance of such software would reduce the effectiveness of the Agency's other loan programs and the software is available commercially. The Agency will not adopt this recommendation at this time.

One comment suggested that an amortization table beyond the initial 24 months is not useful in analyzing the request. For loans with unequal payments, this schedule is necessary to evaluate the long-term viability of the plan. Since it is not essential for loans with equally amortized installments, the Agency is changing the requirement to exclude loans with equal payments from the amortization table.

Four comments recommended allowing lenders to cancel interest rate buy down (IRBD) and have the interest rate revert back to the rate in effect before IRBD. This recommendation cannot be adopted because it would result in windfall gains to lenders while offering no benefit to the borrower or the Agency.

One comment recommended that a provision be made for the Agency to cancel interest assistance if borrowers do not adhere to their plan. While this would be prudent lending, it is nearly impossible to monitor and enforce such a requirement and would be primarily subjective. If borrowers do not adhere to the plan, the appropriate remedy is

liquidation. The change will not be adopted.

Various comments concerning forms were received; as a result, the forms were redesigned for clarity.

Justification for Effective Date

Good cause is shown for an immediate effective date because of the need to accelerate the availability of assistance under this program. Numerous natural disasters throughout the country have reduced farm production and widespread reductions in commodity prices have lowered income which has resulted in deteriorating financial conditions for many producers. As a result of those deteriorating financial conditions, we anticipate an increased demand for guaranteed farm loans. These streamlining regulations will enable the Agency to serve the needs of the financially stressed farmers and lenders more quickly and efficiently; therefore an immediate implementation is justified.

List of Subjects

7 CFR Part 762

Agriculture, Loan programs—Agriculture.

7 CFR Part 1980

Agriculture, Loan programs—Agriculture.

The Farm Service Agency adopts the proposed rule published September 25, 1998, in the **Federal Register** [63 FR 51458–51488] and also adopts its interim rule published February 28, 1991, in the **Federal Register** [56 FR 8258–8272] with changes based upon comments received. Accordingly, 7 CFR chapters VII and XVIII are amended as follows:

7 CFR Chapter VII

1. Part 762 is added to read as follows:

PART 762—GUARANTEED FARM LOANS

Sec.

762.1–762.100 [Reserved].
762.101 Introduction.
762.102 Abbreviations and definitions.
762.103 Full faith and credit.
762.104 Appeals.
762.105 Eligibility and substitution of lenders.
762.106 Preferred and certified lender programs.
762.107–762.109 [Reserved].
762.110 Loan application.
762.111–762.119 [Reserved].
762.120 Loan applicant eligibility.
762.121 Loan purposes.
762.122 Loan limitations.
762.123 Insurance and farm inspection requirements.
762.124 Interest rates, terms, charges, and fees.
762.125 Financial feasibility.
762.126 Security requirements.
762.127 Appraisal requirements.
762.128 Environmental and special laws.
762.129 Percent of guarantee and maximum loss.
762.130 Loan approval and issuing the guarantee.
762.131–762.139 [Reserved].
762.140 General servicing responsibilities.
762.141 Reporting requirements.
762.142 Servicing related to collateral.
762.143 Servicing distressed accounts.
762.144 Repurchase of guaranteed portion from a secondary market holder.
762.145 Restructuring guaranteed loans.
762.146 Other servicing procedures.
762.147 Servicing shared appreciation agreements.
762.148 Bankruptcy.
762.149 Liquidation.
762.150 Interest assistance program.
762.151–762.159 [Reserved].
762.160 Sale, assignment and participation.

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

PART 762—GUARANTEED FARM LOANS

§§ 762.1–762.100 [Reserved].

§ 762.101 Introduction.

(a) *Scope.* This subpart contains regulations governing Operating Loans and Farm Ownership loans guaranteed by the Farm Service Agency. This subpart applies to lenders, holders, borrowers, Agency personnel, and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans.

(b) *Policy.* The Agency issues guarantees on loans made to qualified loan applicants without regard to race, color, religion, sex, national origin, marital status, or age, provided the loan applicant can enter into a legal and binding contract, or whether all or part of the applicant's income derives from any public assistance program or whether the applicant, in good faith, exercises any rights under the Consumer Protection Act.

(c) *Lender list and classification.*

(1) The Agency maintains a current list of lenders who express a desire to participate in the guaranteed loan program. This list is made available to farmers upon request.

(2) Lenders who participate in the Agency guaranteed loan program will be classified into one of the following categories:

(i) Standard Eligible Lender under § 762.105,

(ii) Certified Lender, or

(iii) Preferred Lender under § 762.106.

(3) Lenders may continue to make loans under Approved Lender Program (ALP) agreements until they expire; however, these agreements will not be renewed when they expire. All ALP agreements with farm credit institutions will expire on February 12, 2001.

(d) *Type of guarantee.* Guarantees are available for both a loan note or a line of credit. A loan note is used for a loan of fixed amount and term. A line of credit has a fixed term, but no fixed amount. The principal amount outstanding at any time, however, may not exceed the line of credit ceiling contained in the contract. Both guarantees are evidenced by the same loan guarantee form.

(e) *Termination of loan guarantee.* The loan guarantee will automatically terminate as follows:

(1) Upon full payment of the guaranteed loan. A zero balance within the period authorized for advances on a line of credit will not terminate the guarantee;

(2) Upon payment of a final loss claim; or

(3) Upon written notice from the lender to the Agency that a guarantee is no longer desired provided the lender holds all of the guaranteed portion of the loan. The loan guarantee will be returned to the Agency office for cancellation within 30 days of the date of the notice by the lender.

§ 762.102 Abbreviations and definitions.

(a) *Abbreviations.*

ALP—Approved lender program

CLP—Certified lender program

CONACT—Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.)

EPA—Environmental Protection Agency

EIS—Environmental impact statement

EM—Emergency loans

FO—Farm ownership loans

FSA—Farm Service Agency

OL—Operating loans

PLP—Preferred lender program

SW—Soil and water

USDA—United States Department of Agriculture

(b) *Definitions.*

Additional security. Collateral in excess of that needed to fully secure the loan.

Agency. The Farm Service Agency, including its employees and state and area committee members, and any successor agency.

Allonge. An attachment or an addendum to a note.

Applicant. For guaranteed loans, the lender requesting a guarantee is the applicant. The party applying to the lender for a loan will be considered the loan applicant.

Aquaculture. The husbandry of aquatic organisms in a controlled or

selected environment. An aquatic organism is any fish, amphibian, reptile, or aquatic plant. An aquaculture operation is considered to be a farm only if it is conducted on the grounds which the loan applicant owns, leases, or has an exclusive right to use. An exclusive right to use must be evidenced by a permit issued to the loan applicant and the permit must specifically identify the waters available to be used by the loan applicant only.

Assignment of guaranteed portion. A process by which the lender transfers the right to receive payments or income on the guaranteed loan to another party, usually in return for payment in the amount of the loan's guaranteed principal. The lender retains the unguaranteed portion in its portfolio and receives a fee from the purchaser or assignee to service the loan, and receive and remit payments according to a written assignment agreement. This assignment can be reassigned or sold multiple times.

Average farm customers. Those conventional farm borrowers who are required to pledge their crops, livestock, and other chattel and real estate security for the loan. This does not include those high-risk farmers with limited security and management ability who are generally charged a higher interest rate by conventional agricultural lenders. Also, this does not include those low-risk farm customers who obtain financing on a secured or unsecured basis, who have as collateral such items as savings accounts, time deposits, certificates of deposit, stocks and bonds, and life insurance, which they are able to pledge for the loan.

Basic Security. All farm machinery, equipment, vehicles, foundation and breeding livestock herds and flocks, including replacements, and real estate which serves as security for a loan guaranteed by the Agency.

Beginning farmer or rancher. A beginning farmer or rancher is an individual or entity who:

(1) Meets the loan eligibility requirements for OL or FO assistance, as applicable, in accordance with this subpart;

(2) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 years. This requirement applies to all members of an entity;

(3) Will materially and substantially participate in the operation of the farm or ranch:

(i) In the case of a loan made to an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(ii) In the case of a loan made to an entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that the individual provide some amount of the management, or labor and management necessary for day-to-day activities, such that if the individual did not provide these inputs, operation of the farm or ranch would be seriously impaired;

(4) Agrees to participate in any loan assessment and financial management programs required by Agency regulations;

(5) Does not own real farm or ranch property or who, directly or through interests in family farm entities owns real farm or ranch property, the aggregate acreage of which does not exceed 25 percent of the average farm or ranch acreage of the farms or ranches in the county where the property is located. If the farm is located in more than one county, the average farm acreage of the county where the loan applicant's residence is located will be used in the calculation. If the applicant's residence is not located on the farm or if the loan applicant is an entity, the average farm acreage of the county where the major portion of the farm is located will be used. The average county farm or ranch acreage will be determined from the most recent Census of Agriculture developed by the U.S. Department of Commerce, Bureau of the Census or USDA;

(6) Demonstrates that the available resources of the loan applicant and spouse (if any) are not sufficient to enable the loan applicant to enter or continue farming or ranching on a viable scale; and

(7) In the case of an entity:

(i) All the members are related by blood or marriage; and

(ii) All the stockholders in a corporation are beginning farmers or ranchers.

Borrower. An individual or entity which has outstanding obligations to the lender under any Agency loan or loan guarantee program. A borrower includes all parties liable for Agency debt, including collection-only borrowers, except those whose total loan and accounts have been voluntarily or involuntarily foreclosed or liquidated, or who have been discharged of all Agency debt.

Capital leases. Agreements under which the lessee effectively acquires ownership of the asset being leased. A lease is a capital lease if it meets any one of the following criteria:

(1) The lease transfers ownership of the property to the lessee at the end of the lease term.

(2) The lessee has the right to purchase the property for significantly less than its market value at the end of the lease.

(3) The term of the lease is at least 75 percent of the estimated economic life of the leased property.

(4) The present value of the minimum lease payments equals or exceeds 90 percent of the fair market value of the leased property.

Cash flow budget. A projection listing all anticipated cash inflows (including all farm income, nonfarm income and all loan advances) and all cash outflows (including all farm and nonfarm debt service and other expenses) to be incurred by the borrower during the period of the budget. Cash flow budgets for loans under $50,000 do not require income and expenses itemized by categories. A cash flow budget may be completed either for a 12 month period, a typical production cycle or the life of the loan, as appropriate. It may also be prepared with a breakdown of cash inflows and outflows for each month of the review period and includes the expected outstanding operating credit balance for the end of each month. The latter type is referred to as a ''monthly cash flow budget''.

Collateral. Property pledged as security for a loan to ensure repayment of an obligation.

Conditional commitment. The Agency's commitment to the lender that the material it has submitted is approved subject to the completion of all conditions and requirements contained therein.

Consolidation. The combination of outstanding principal and interest balance of two or more OL loans.

Controlled. When a director or employee has more than a 50 percent ownership in the entity or, the director or employee, together with relatives of the director or employee, have more than a 50 percent ownership.

Cooperative. An entity which has farming as its purpose and whose members have agreed to share the profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of the State in which the entity will operate a farm.

Cosigner. A party who joins in the execution of a promissory note to assure its repayment. The cosigner becomes jointly and severally liable to comply with the terms of the note. In the case of an entity applicant, the cosigner

cannot be a member, partner, joint operator, or stockholder of the entity.

County average yield. The historical average yield for a commodity in a particular political subdivision, as determined or published by a government entity or other recognized source.

Debt writedown. To reduce the amount of the borrower's debt to that amount that is determined to be collectible based on an analysis of the security value and the borrower's ability to pay.

Deferral. A postponement of the payment of interest or principal or both. Principal may be deferred in whole or in part, interest may only be partially deferred.

Depreciation and amortization expenses. An annual allocation of the cost or other basic value of tangible capital assets, less salvage value, over the estimated life of the unit (which may be a group of assets), in a systematic and rational manner.

Direct loan. A loan serviced by the Agency as lender.

Entity. Cooperatives, corporations, partnerships, or joint operations.

Family farm. A farm which:

(1) Produces agricultural commodities for sale in sufficient quantities so that it is recognized in the community as a farm rather than a rural residence;

(2) Provides enough agricultural income by itself, including rented land, or together with any other dependable income to enable the borrower to:

(i) Pay necessary family living and operating expenses;

(ii) Maintain essential chattel and real property; and

(iii) Pay debts;

(3) Is managed by:

(i) The borrower when a loan is made to an individual; or,

(ii) The members, stockholders, partners, or joint operators responsible for operating the farm when a loan is made to an entity;

(4) Has a substantial amount of the labor requirement for the farm and nonfarm enterprise provided by:

(i) The borrower and the borrower's immediate family for a loan made to an individual; or

(ii) The members, stockholders, partners, or joint operators responsible for operating the farm, along with the families of these individuals, for a loan made to an entity; and

(5) May use a reasonable amount of full-time hired labor and seasonal labor during peak load periods.

Family living expenses. Any withdrawals from income to provide for needs of family members.

Family members. The immediate members of the family residing in the same household with the individual borrower, or, in the case of an entity, with the operator.

Farm. A tract or tracts of land, improvements, and other appurtenances which are used or will be used in the production of crops, livestock, or aquaculture products for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. The term ''farm'' also includes any such land and improvements and facilities used in a nonfarm enterprise. It may also include the residence which, although physically separate from the farm acreage, is ordinarily treated as part of the farm in the local community.

Feasible plan. A plan for loan servicing purposes which shows the elements of ''positive cash flow'' except that the minimum acceptable ''Term Debt and Capital Lease Coverage Ratio'' is 1.0 rather than 1.1 required for ''positive cash flow.''

Financially viable operation. An operation which, with Agency assistance, is projected to improve its financial condition over a period of time to the point that the operator can obtain commercial credit without further Agency direct or guaranteed assistance. A borrower that will meet the Agency classification of ''commercial,'' as defined in Agency Instruction 2006–W, available in any Agency office, will be considered to be financially viable. Such an operation must generate sufficient income to:

(1) Meet annual operating expenses and debt payments as they become due;

(2) Meet basic family living expenses to the extent they are not met by dependable nonfarm income;

(3) Provide for replacement of capital items; and

(4) Provide for long-term financial growth.

Fish. Any aquatic, gilled animal commonly known as ''fish'' as well as mollusks, or crustaceans (or other invertebrates) produced under controlled conditions (that is, feeding, tending, harvesting, and such other activities as are necessary to properly raise and market the products) in ponds, lakes, streams, artificial enclosures, or similar holding areas.

Fixture. An item of personal property attached to real estate in such a way that it cannot be removed without defacing or dismantling the structure, or substantially damaging the structure itself.

Graduation. The Agency's determination that a borrower of a direct loan, is financially stable enough to refinance that loan with a commercial lender with or without a guarantee.

Guaranteed loan. A loan made and serviced by a lender for which the Agency has entered into a lenders agreement and for which the Agency has issued a loan note guarantee. This term also includes lines of credit except where otherwise indicated.

Hazard insurance. Includes fire, windstorm, lightning, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, builder's risk, public liability, property damage, flood or mudslide, workers compensation, or any similar insurance that is available and needed to protect the security, or that is required by law.

Holder. The person or organization other than the lender who holds all or a part of the guaranteed portion of an Agency guaranteed loan but who has no servicing responsibilities. When the lender assigns a part of the guaranteed loan to an assignee by way of execution of an assignment form, the assignee becomes a holder.

In-house expenses. Expenses associated with credit management and loan servicing by the lender and the lender's contractor. In-house expenses include, but are not limited to: employee salaries, staff lawyers, travel, supplies, and overhead.

Interest assistance agreement. The signed agreement between the Agency and the lender setting forth the terms and conditions of the interest assistance.

Interest assistance anniversary date. Date on which interest assistance reviews and claims will be effective. This date is established by the lender. Once established, it will not change unless the loan is restructured.

Interest assistance review. The yearly review process which includes an analysis of the borrower or applicant's farming operation and need for continued interest assistance, completion of the needs test and request for continuation of interest assistance.

Joint operation. Individuals that have agreed to operate a farm or farms together as a business unit. The real and personal property is owned separately or jointly by the individuals. Joint operations include limited liability companies having more than one member.

Land development. Items such as terracing, clearing, leveling, fencing, drainage and irrigation systems, ponds, forestation, permanent pastures, perennial hay crops, basic soil amendments, and other items of land improvements which conserve or permanently enhance productivity.

Lender. The organization making and servicing the loan or advancing and servicing the line of credit which is guaranteed under the provisions of

Agency regulations. The lender is also the party requesting a guarantee.

Lender's agreement. The appropriate Agency form executed by the Agency and the lender setting forth the loan responsibilities of the lender and agency when the loan guarantee is issued.

Lien. A legally enforceable hold or claim on the property of another obtained as security for the repayment of indebtedness or an encumbrance on property to enforce payment of an obligation.

Liquidation expenses. The cost of an appraisal, due diligence evaluation, environmental assessment, outside attorney fees and other costs incurred as a direct result of liquidating the security for the guaranteed loan. Liquidation fees do not include in-house expenses.

Loan or line of credit agreement. A document which contains certain lender and borrower agreements, conditions, limitations, and responsibilities for credit extension and acceptance in a loan format where loan principal balance may fluctuate throughout the term of the document.

Loan applicant. The party applying to a lender for a guaranteed loan or line of credit.

Loan transaction. Any loan approval or servicing action.

Loss claim. A request made to the Agency by a lender to receive a reimbursement based on a percentage of the lender's loss on a loan covered by an Agency guarantee.

Loss rate. The net amount of guaranteed OL, FO, and SW loss claims paid on loans made in the past 7 years divided by the total loan amount of OL, FO, and SW made in the past 7 years.

Major deficiency. A deficiency that directly affects the soundness of the loan.

Majority interest. Any individual or a combination of individuals owning more than a 50 percent interest in a cooperative, corporation, joint operation, or partnership.

Market value. The amount which an informed and willing buyer would pay an informed and willing, but not forced, seller in a completely voluntary sale.

Minor deficiency. A deficiency that violates Agency regulations, but does not affect the soundness of a loan.

Mortgage. A legal instrument giving the lender a security interest or lien on real or personal property of any kind.

Negligent servicing. The failure to perform those services which would be considered normal industry standards of loan management or failure to comply with any servicing requirement of this subpart or the lenders agreement or the guarantee. The term includes the concept of a failure to act or failure to act timely consistent with actions of a reasonable lender in loan making, servicing, and collection.

Net farm operating income. The gross income generated by a farming operation annually, minus all yearly operating expenses (including withdrawals from entities for living expenses), operating loan interest, interest on term debt and capital lease payments, and depreciation and amortization expenses. Net farm operating income does not include off-farm income and social security taxes, carryover debt and delinquent interest.

Net recovery value. The market value of the security property assuming that it will be acquired by the lender, and sold for its highest and best use, less the lender's costs of property acquisition, retention, maintenance, and liquidation.

Nonessential asset. Assets in which the borrower has an ownership interest that do not contribute an income to pay essential family living expenses or maintain a sound farming operation, and are not exempt from judgment creditors.

Normal income security. All security not considered basic security.

Participation. A loan arrangement where a primary or lead lender is typically the lender of record but the loan funds may be provided by one or more other lenders due to loan size or other factors. Typically, participating lenders share in the interest income or profit on the loan based on the relative amount of the loan funds provided after deducting the servicing fees of the primary or lead lender.

Partnership. Any entity consisting of two or more individuals who have agreed to operate a farm as one business unit. The entity must be recognized as a partnership by the laws of the State in which the entity will operate and must be authorized to own both real estate and personal property and to incur debts in its own name.

Positive cash flow. The ability of a borrower's operation to demonstrate: a term debt and capital lease coverage ratio of at least 1.1; and a capital replacement and term debt repayment margin equal to or greater than any planned capital asset purchases not financed. The term debt and capital lease coverage ratio and the capital replacement and term debt repayment margin are calculated as follows:

(1) Add projected net farm operating income, projected annual nonfarm income, projected capital depreciation and amortization expenses, scheduled annual interest on term debt, and scheduled annual interest on capital leases.

(2) Subtract from this sum projected annual income and social security tax payments, including any delinquent taxes, and family living expenses. The difference is the balance available for term debt repayment.

(3) Divide the balance available for term debt repayment by the sum of the annual scheduled principal and interest payments on term debt, plus the annual scheduled principal and interest payments on capital leases, excluding delinquent installments. The quotient is the term debt and capital lease coverage ratio.

(4) Add the balance available for term debt repayment to any cash carryover from the preceding year.

(5) Subtract from this sum the amount of the total annual scheduled term debt and capital lease payments, and any debt carried over from the previous year. The difference is the capital replacement and term debt repayment margin.

Potential liquidation value. The amount of the lender's protective bid at the foreclosure sale. Potential liquidation value is determined by an independent appraiser using comparables from other forced liquidation sales.

Present value. The present worth of a future stream of payments discounted to the current date.

Primary security. The minimum amount of collateral needed to fully secure a proposed loan.

Principals of borrowers. Includes owners, officers, directors, entities and others directly involved in the operation and management of a business.

Protective advances. Advances made by a lender to protect or preserve the collateral itself from loss or deterioration. Protective advances include but are not limited to:

(1) Payment of delinquent taxes,

(2) Annual assessments,

(3) Ground rents,

(4) Hazard or flood insurance premiums against or affecting the collateral,

(5) Harvesting costs,

(6) Other expenses needed for emergency measures to protect the collateral.

Recapture. The amount that a guaranteed lender is entitled to recover from a guaranteed loan borrower in consideration for the lender writing down a portion of their guaranteed loan debt when that loan was secured by real estate and that real estate increases in value. Also, the act of collecting shared appreciation.

Related by blood or marriage. Individuals who are connected to one another as husband, wife, parent, child, brother, or sister.

Relative. An individual or spouse and anyone having the following relationship to either: parent, son, daughter, sibling, stepparent, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, uncle, aunt, nephew, niece, grandparent, granddaughter, grandson, and the spouses of the foregoing.

Rescheduling. To rewrite the rates and terms of a single note or line of credit agreement.

Restructuring. Changing terms of a debt through either a rescheduling, deferral, or writedown or a combination thereof.

Sale of guaranteed portion. See assignment of guaranteed portion.

Security. Property of any kind subject to a real or personal property lien. Any reference to ''collateral'' or ''security property'' shall be considered a reference to the term ''security.''

Shared appreciation agreement. An agreement between a guaranteed lender and borrower that requires a borrower that has received a write down on a guaranteed loan secured by real estate to repay the lender some or all of the writedown received, based on a percentage of any increase in the value of that real estate at some future date, if certain conditions exist.

State. The major political subdivision of the United States and the organization of program delivery for the Agency.

Subordination. A document executed by a lender to relinquish their priority of lien in favor of another lender that provides the other lender with a priority right to collect a debt of a specific dollar amount from the sale of the same collateral.

Subsequent loans. Any loans processed by the Agency after an initial loan has been made to the same borrower.

Transfer and assumption. The conveyance by a debtor to an assuming party of the assets, collateral, and liabilities of the loan in return for the assuming party's binding promise to pay the debt outstanding.

Typical plan. A projected income and expense statement listing all anticipated cash flows for a typical 12-month production cycle; including all farm and nonfarm income and all expenses (including debt service) to be incurred by the borrower during such period.

Unaccounted for security. Items, as indicated on the lender's loan application, request for guarantee, or any interim agreements provided to the Agency, that are security for the guaranteed loan that were misplaced, stolen, sold, or otherwise missing, where replacement security was not obtained or the proceeds from their sale have not been applied to the loan.

United States. The United States itself, each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Veteran. Any person who served in the military, naval, or air service during any war as defined in section 101(12) of title 38, United States Code.

§ 762.103 Full faith and credit.

(a) *Fraud and misrepresentation.* The loan guarantee constitutes an obligation supported by the full faith and credit of the United States. The Agency may contest the guarantee only in cases of fraud or misrepresentation by a lender or holder, in which:

(1) The lender or holder had actual knowledge of the fraud or misrepresentation at the time it became the lender or holder, or

(2) The lender or holder participated in or condoned the fraud or misrepresentation.

(b) *Lender violations.* The loan guarantee cannot be enforced by the lender, regardless of when the Agency discovers the violation, to the extent that the loss is a result of:

(1) Violation of usury laws;

(2) Negligent servicing;

(3) Failure to obtain the required security; or,

(4) Failure to use loan funds for purposes specifically approved by the Agency.

(c) *Enforcement by holder.* The guarantee and right to require purchase will be directly enforceable by the holder even if:

(1) The loan guarantee is contestable based on the lender's fraud or misrepresentation; or

(2) The loan note guarantee is unenforceable by the lender based on a lender violation.

§ 762.104 Appeals.

(a) The loan applicant or borrower and lender must jointly execute the written request for review of an alleged adverse decision made by the Agency. However, in cases where the Agency has denied or reduced the amount of the final loss payment, the decision may be appealed by the lender only.

(b) A decision made by the lender adverse to the borrower is not a decision by the Agency, whether or not concurred in by the Agency, and may not be appealed.

(c) The lender or Agency may request updated information from the borrower to implement an appeal decision.

(d) Appeals will be handled in accordance with parts 11 and 780 of this title.

§ 762.105 Eligibility and substitution of lenders.

(a) *General.* To participate in FSA guaranteed farm loan programs, a lender must meet the eligibility criteria in this part. The standard eligible lender must demonstrate eligibility and provide such evidence as the Agency may request.

(b) *Standard eligible lender eligibility criteria.*

(1) A lender must have experience in making and servicing agricultural loans and have the capability to make and service the loan for which a guarantee is requested;

(2) The lenders must not have losses or deficiencies in processing and servicing guaranteed loans above a level which would indicate an inability to properly process and service a guaranteed agricultural loan.

(3) A lender must be subject to credit examination and supervision by an acceptable State or Federal regulatory agency;

(4) The lender must maintain an office near enough to the collateral's location so it can properly and efficiently discharge its loan making and loan servicing responsibilities or use Agency approved agents, correspondents, branches, or other institutions or persons to provide expertise to assist in carrying out its responsibilities. The lender must be a local lender unless it:

(i) normally makes loans in the region or geographic location in which the loan applicant's operation being financed is located, or

(ii) demonstrates specific expertise in making and servicing loans for the proposed operation.

(5) The lender, its officers, or agents must not be debarred or suspended from participation in Government contracts or programs or be delinquent on a Government debt.

(c) *Substitution of lenders.* A new eligible lender may be substituted for the original lender, upon the original lender's concurrence, under the following conditions:

(1) The Agency approves of the substitution in writing;

(2) The new lender agrees in writing to:

(i) Assume all servicing and other responsibilities of the original lender and to acquire the unguaranteed portion of the loan;

(ii) Execute a lender's agreement if one is not in effect;

(iii) Execute a modification of the guarantee provided by the Agency to identify the new lender, and contain the

amount of debt at the time of the substitution and the new loan terms if applicable; and,

(iv) Give any holder written notice of the substitution. If the rate and terms are changed, written concurrence from the holder is required.

(3) The original lender will:

(i) Assign their promissory note, lien instruments, loan agreements, and other documents to the new lender.

(ii) If the loan is subject to an existing interest assistance agreement, submit a request for subsidy for the partial year that it has owned the loan.

(d) *Lender name or ownership changes.*

(1) When a lender begins doing business under a new name or undergoes an ownership change the lender will notify the Agency.

(2) The lender's CLP or PLP status is subject to reconsideration when ownership changes.

(3) The lender will execute a new lender's agreement when ownership changes.

§ 762.106 Preferred and certified lender programs.

(a) *General.*

(1) Lenders who desire PLP or CLP status must prepare a written request addressing:

(i) The States in which they desire to receive PLP or CLP status and their branch offices which they desire to be considered by the Agency for approval; and

(ii) Each item of the eligibility criteria for PLP or CLP approval in this section, as appropriate.

(2) The lender may include any additional supporting evidence or other information the lender believes would be helpful to the Agency in making its determination.

(3) The lender must send its request to the Agency State office for the State in which the lender's headquarters is located.

(4) The lender must provide any additional information requested by the Agency to process a PLP or CLP request if the lender continues with the approval process.

(b) *CLP criteria.* The lender must meet the following requirements to obtain CLP status:

(1) Qualify as a standard eligible lender under § 762.105;

(2) Have a lender loss rate not in excess of the maximum CLP loss rate established by the Agency and published periodically in a **Federal Register** Notice. The Agency may waive the loss rate criteria for those lenders whose loss rate was substantially affected by a disaster as defined in part 1945, subpart A, of this title.

(3) Have proven an ability to process and service Agency guaranteed loans by showing that the lender:

(i) Submitted substantially complete and correct guaranteed loan applications; and

(ii) Serviced all guaranteed loans according to Agency regulations;

(4) Have made the minimum number of guaranteed OL, FO, or Soil and Water (SW) loans established by the Agency and published periodically in a **Federal Register** Notice.

(5) Not be under any regulatory enforcement action such as a cease and desist order, written agreement, or an appointment of conservator or receiver, based upon financial condition;

(6) Designate a qualified person or persons to process and service Agency guaranteed loans for each of the lender offices which will process CLP loans. To be qualified, the person must meet the following conditions:

(i) Have attended Agency sponsored training in the past 12 months or will attend training in the next 12 months; and

(ii) Agree to attend Agency sponsored training each year;

(7) Use forms acceptable to the Agency for processing, analyzing, securing, and servicing Agency guaranteed loans and lines of credit;

(8) Submit to the Agency copies of financial statements, cash flow plans, budgets, promissory notes, analysis sheets, collateral control sheets, security agreements and other forms to be used for farm loan processing and servicing;

(c) *PLP criteria.* The lender must meet the following requirements to obtain PLP status:

(1) Meet the CLP eligibility criteria under this section.

(2) Have a credit management system, satisfactory to the Agency, based on the following:

(i) The lender's written credit policies and underwriting standards;

(ii) Loan documentation requirements;

(iii) Exceptions to policies;

(iv) Analysis of new loan requests;

(v) Credit file management;

(vi) Loan funds and collateral management system;

(vii) Portfolio management;

(viii) Loan reviews;

(ix) Internal credit review process;

(x) Loan monitoring system; and

(xi) The board of director's responsibilities.

(3) Have made the minimum number of guaranteed OL, FO, or SW loans established by the Agency and published periodically in a **Federal Register** Notice.

(4) Have a lender loss rate not in excess of the rate of the maximum PLP loss rate established by the Agency and published periodically in a **Federal Register** Notice. The Agency may waive the loss rate criteria for those lenders whose loss rate was substantially affected by a disaster as defined in part 1945, subpart A, of this title.

(5) Show a consistent practice of submitting applications for guaranteed loans containing accurate information supporting a sound loan proposal.

(6) Show a consistent practice of processing Agency guaranteed loans without recurring major or minor deficiencies.

(7) Demonstrate a consistent, above average ability to service guaranteed loans based on the following:

(i) Borrower supervision and assistance;

(ii) Timely and effective servicing; and

(iii) Communication with the Agency.

(8) Designate a person or persons, approved by the Agency, to process and service PLP loans for the Agency.

(d) *CLP and PLP approval.*

(1) If a lender applying for CLP or PLP status is or has recently been involved in a merger or acquisition, all loans and losses attributed to both lenders will be considered in the eligibility calculations.

(2) The Agency will determine which branches of the lender have the necessary experience and ability to participate in the CLP or PLP program based on the information submitted in the lender application and on Agency experience.

(3) Lenders who meet the criteria will be granted CLP or PLP status for a period not to exceed 5 years.

(4) PLP status will be conditioned on the lender carrying out its credit management system as proposed in its request for PLP status and any additional loan making or servicing requirements agreed to and documented the PLP lender's agreement. If the PLP lender's agreement does not specify any agreed upon process for a particular action, the PLP lender will act according to regulations governing CLP lenders.

(e) *Monitoring CLP and PLP lenders.* CLP and PLP lenders will provide information and access to records upon Agency request to permit the Agency to audit the lender for compliance with these regulations.

(f) *Renewal of CLP or PLP status.*

(1) PLP or CLP status will expire within a period not to exceed 5 years from the date the lender's agreement is executed, unless a new lender's Agreement is executed.

(2) Renewal of PLP or CLP status is not automatic. A lender must submit a written request for renewal of a lender's

agreement with PLP or CLP status which includes information:

(i) Updating the material submitted in the initial application; and,

(ii) Addressing any new criteria established by the Agency since the initial application.

(3) PLP or CLP status will be renewed if the applicable eligibility criteria under this section are met, and no cause exists for denying renewal under paragraph (g) of this section.

(g) *Revocation of PLP or CLP status.*

(1) The Agency may revoke the lender's PLP or CLP status at any time during the 5 year term for cause.

(2) Any of the following instances constitute cause for revoking or not renewing PLP or CLP status:

(i) Violation of the terms of the lender's agreement;

(ii) Failure to maintain PLP or CLP eligibility criteria;

(iii) Knowingly submitting false or misleading information to the Agency;

(iv) Basing a request on information known to be false;

(v) Deficiencies that indicate an inability to process or service Agency guaranteed farm loan programs loans in accordance with this subpart;

(vi) Failure to correct cited deficiencies in loan documents upon notification by the Agency;

(vii) Failure to submit status reports in a timely manner;

(viii) Failure to use forms, or follow credit management systems (for PLP lenders) accepted by the Agency; or

(ix) Failure to comply with the reimbursement requirements of § 762.146(c)(7).

(3) A lender which has lost PLP or CLP status must be reconsidered for eligibility to continue as a Standard Eligible Lender (for former PLP and CLP lenders), or as a CLP lender (for former PLP lenders) in submitting loan guarantee requests. They may reapply for CLP or PLP status when the problem causing them to lose their status has been resolved.

§§ 762.107–762.109 [Reserved]

§ 762.110 Loan Application.

(a) *Loans for $50,000 or less.* All lenders except PLP lenders will submit the following items:

(1) A complete application for loans of $50,000 or less must, at least, consist of:

(i) The application form;

(ii) Loan narrative;

(iii) Balance sheet;

(iv) Cash flow budget;

(v) Credit report;

(vi) A plan for servicing the loan.

(2) In addition to the minimum requirements, the lender will perform at least the same level of evaluation and documentation for a guaranteed loan that the lender typically performs for non-guaranteed loans of a similar type and amount.

(3) The $50,000 threshold includes any single loan, or package of loans submitted for consideration at any one time. A lender must not split a loan into two or more parts to meet the threshold thereby avoiding additional documentation.

(4) The Agency may require lenders with a lender loss rate in excess of the rate for CLP lenders to assemble additional documentation from paragraph (b) of this section.

(b) *Loans over $50,000.* A complete application for loans over $50,000 will consist of the items required in paragraph (a) of this section plus the following:

(1) Verification of income;

(2) Verification of debts over $1,000;

(3) Three years financial history;

(4) Three years of production history (for standard eligible lenders only);

(5) Proposed loan agreements; and,

(6) If construction or development is planned, a copy of the plans, specifications, and development schedule.

(c) *Applications from PLP lenders.* Notwithstanding paragraphs (a) and (b) of this section, a complete application for PLP lenders will consist of at least:

(1) An application form;

(2) A loan narrative; and

(3) Any other items agreed to during the approval of the PLP lender's status and contained in the PLP lender agreement.

(d) *Submitting applications.*

(1) All lenders must compile and maintain in their files a complete application for each guaranteed loan. See paragraphs (a), (b), and (c) of this section.

(2) The Agency will notify CLP lenders which items to submit to the Agency.

(3) PLP lenders will submit applications in accordance with their agreement with the Agency for PLP status.

(4) CLP and PLP lenders must certify that the required items, not submitted, are in their files.

(5) The Agency may request additional information from any lender or review the lender's loan file as needed to make eligibility and approval decisions.

(e) *Incomplete applications.* If the lender does not provide the information needed to complete its application by the deadline established in an Agency request for the information, the application will be considered withdrawn by the lender.

(f) *Conflict of interest.*

(1) When a lender submits the application for a guaranteed loan, the lender will inform the Agency in writing of any relationship which may cause an actual or potential conflict of interest.

(2) Relationships include:

(i) The lender or its officers, directors, principal stockholders (except stockholders in a Farm Credit System institution that have stock requirements to obtain a loan), or other principal owners having a financial interest (other than lending relationships in the normal course of business) in the loan applicant or borrower.

(ii) The loan applicant or borrower, a relative of the loan applicant or borrower, anyone residing in the household of the loan applicant or borrower, any officer, director, stockholder or other owner of the loan applicant or borrower holds any stock or other evidence of ownership in the lender.

(iii) The loan applicant or borrower, a relative of the loan applicant or borrower, or anyone residing in the household of the loan applicant or borrower is an Agency employee.

(iv) The officers, directors, principal stockholders (except stockholders in a Farm Credit System institution that have stock requirements to obtain a loan), or other principal owners of the lender have substantial business dealings (other than in the normal course of business) with the loan applicant or borrower.

(v) The lender or its officers, directors, principal stockholders, or other principal owners have substantial business dealings with an Agency employee.

(3) The lender must furnish additional information to the Agency upon request.

(4) The Agency will not approve the application until the lender develops acceptable safeguards to control any actual or potential conflicts of interest.

§§ 762.111–762.119 [Reserved]

§ 762.120 Loan applicant eligibility.

Loan applicants must meet all of the following requirements to be eligible for a guaranteed OL or a guaranteed FO:

(a) *Agency loss.* The loan applicant, and anyone who will execute the promissory note, have not caused the Agency a loss by receiving debt forgiveness on more than three occasions on or prior to April 4, 1996, or on any occasion after April 4, 1996, on all or a portion of any direct or guaranteed loan made under the authority of the CONACT by debt write-down, write-off, compromise under the

provisions of section 331 of the CONACT, adjustment, reduction, charge-off, or discharge in bankruptcy or through any payment of a guaranteed loss claim under the same circumstances. Notwithstanding the preceding sentence, applicants who receive a write-down under section 353 of the CONACT, or are current on payments under a confirmed bankruptcy reorganization plan, may receive direct and guaranteed OL loans to pay annual farm and ranch operating expenses, which include family subsistence, if the applicant meets all other requirements for the loan.

(b) *Delinquent Federal debt.* The loan applicant, and anyone who will execute the promissory note, is not delinquent on any Federal debt, other than a debt under the Internal Revenue Code of 1986. (Any debt under the Internal Revenue Code of 1986 may be considered by the lender in determining cash flow and creditworthiness.)

(c) *Outstanding judgments.* The loan applicant, and anyone who will execute the promissory note, have no outstanding unpaid judgment obtained by the United States in any court. Such judgments do not include those filed as a result of action in the United States Tax Courts.

(d) *Citizenship.*

(1) The loan applicant is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationalization Act. Indefinite parolees are not eligible. For an entity applicant, all members of an entity must meet this citizenship test.

(2) Aliens must provide the appropriate Immigration and Naturalization Service forms to document their permanent residency.

(e) *Legal capacity.* The loan applicant and all borrowers on the loan must possess the legal capacity to incur the obligations of the loan.

(f) *False or misleading information.* The loan applicant, in past dealings with the Agency, must not have provided the Agency with false or misleading documents or statements.

(g) *Credit history.*

(1) The individual or entity loan applicant and all entity members must have acceptable credit history demonstrated by debt repayment.

(2) A history of failures to repay past debts as they came due when the ability to repay was within their control will demonstrate unacceptable credit history.

(3) Unacceptable credit history will not include:

(i) Isolated instances of late payments which do not represent a pattern and were clearly beyond their control; or,

(ii) Lack of credit history.

(h) *Test for credit.*

(1) The loan applicant is unable to obtain sufficient credit elsewhere without a guarantee to finance actual needs at reasonable rates and terms.

(2) The potential for sale of any significant nonessential assets will be considered when evaluating the availability of other credit.

(3) Ownership interests in property and income received by an individual or entity loan applicant, and any entity members as individuals will be considered when evaluating the availability of other credit to the loan applicant.

(i) *For OLs:*

(1) The individual or entity loan applicant must be an operator of not larger than a family farm after the loan is closed.

(2) In the case of an entity borrower:

(i) The entity must be authorized to operate, and own if the entity is also an owner, a farm in the State or States in which the farm is located; and

(ii) If the entity members holding a majority interest are related by marriage or blood, at least one member of the entity must operate the family farm; or,

(iii) If the entity members holding a majority interest are not related by marriage or blood, the entity members holding a majority interest must also operate the family farm.

(j) *For FOs:*

(1) The individual must be the operator and owner of not larger than a family farm after the loan is closed.

(2) In the case of an entity borrower:

(i) The entity must be authorized to own and operate a farm in the state or states in which the farm is located; and

(ii) If the entity members holding a majority interest are related by marriage or blood, at least one member of the entity also must operate the family farm and at least one member of the entity or the entity must own the family farm; or,

(iii) If the entity members holding a majority interest are not related by marriage or blood, the entity members holding a majority interest must operate the family farm and the entity members holding a majority interest or the entity must own the family farm.

(k) *For entity loan applicants.* Entity loan applicants must meet the following additional eligibility criteria:

(1) Each entity member's ownership interest may not exceed the family farm definition limits;

(2) The collective ownership interest of all entity members may exceed the family farm definition limits only if the following conditions are met:

(i) All of the entity members are related by blood or marriage;

(ii) All of the members are or will be operators of the entity; and,

(iii) The majority interest holders of the entity must meet the requirements of paragraphs (d), (f), (g), and (i) through (j) of this section;

(3) The entity must be controlled by farmers or ranchers engaged primarily and directly in farming or ranching in the United States after the loan is made; and

(4) The entity members are not themselves entities.

(l) Neither the applicant nor any entity member has been convicted of planting, cultivating, growing, producing, harvesting, or storing a controlled substance under Federal or state law within the last five crop years. ''Controlled substance'' is defined at 21 CFR 1308. Applicants must certify on the application that it and its members, if an entity, have not been convicted of such a crime within the relevant period. If the lender uses the lender's Agency approved forms, the certification may be an attachment to the form.

§ 762.121 Loan purposes.

(a) *Operating Loan purposes.*

(1) Loan funds disbursed under an OL guarantee may only be used for the following purposes:

(i) Payment of costs associated with reorganizing a farm or ranch to improve its profitability;

(ii) Purchase of livestock, including poultry, and farm or ranch equipment or fixtures, quotas and bases, and cooperative stock for credit, production, processing or marketing purposes;

(iii) Payment of annual farm or ranch operating expenses, examples of which include feed, seed, fertilizer, pesticides, farm or ranch supplies, repairs and improvements which are to be expensed, cash rent and family subsistence;

(iv) Payment of scheduled principal and interest payments on term debt provided the debt is for authorized FO or OL purposes;

(v) Other farm and ranch needs;

(vi) Payment of costs associated with land and water development for conservation or use purposes;

(vii) Refinancing indebtedness incurred for any authorized OL purpose, when the lender and loan applicant can demonstrate the need to refinance;

(viii) Payment of loan closing costs;

(ix) Payment of costs associated with complying with Federal or State-approved standards under the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 667). This purpose is limited to applicants who

demonstrate that compliance with the standards will cause them substantial economic injury; and

(x) Payment of training costs required or recommended by the Agency.

(2) Loan funds under a line of credit may be advanced only for the following purposes:

(i) Payment of annual operating expenses, family subsistence, and purchase of feeder animals;

(ii) Payment of current annual operating debts advanced for the current operating cycle; (Under no circumstances can carry-over operating debts from a previous operating cycle be refinanced);

(iii) Purchase of routine capital assets, such as replacement of livestock, that will be repaid within the operating cycle;

(iv) Payment of scheduled, non-delinquent, term debt payments provided the debt is for authorized FO or OL purposes.

(v) Purchase of cooperative stock for credit, production, processing or marketing purposes; and

(vi) Payment of loan closing costs.

(b) *Farm ownership loan purposes.* Guaranteed FO are authorized only to:

(1) Acquire or enlarge a farm or ranch; examples include, but are not limited to, providing down payments, purchasing easements for the loan applicant's portion of land being subdivided, and participating in the beginning farmer downpayment FO program under part 1943, subpart A, of this title;

(2) Make capital improvements; examples include, but are not limited to, the construction, purchase, and improvement of a farm dwelling, service buildings and facilities that can be made fixtures to the real estate, (Capital improvements to leased land may be financed subject to the limitations in § 762.122);

(3) Promote soil and water conservation and protection; examples include the correction of hazardous environmental conditions, and the construction or installation of tiles, terraces and waterways;

(4) Pay closing costs, including but not limited to, purchasing stock in a cooperative and appraisal and survey fees; and

(5) Refinancing indebtedness incurred for authorized FO and OL purposes, provided the lender and loan applicant demonstrate the need to refinance the debt.

(c) *Highly erodible land or wetlands conservation.* Loans may not be made for any purpose which contributes to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity. A decision by the Agency to reject an application for this reason may be appealable. An appeal questioning whether the presence of a wetland, converted wetland, or highly erodible land on a particular property must be filed directly with the USDA agency making the determination in accordance with the agency's appeal procedures.

(d) *Judgment debts.* Loans may not be used to satisfy judgments obtained in the United States District courts. However, Internal Revenue Service judgment liens may be paid with loan funds.

§ 762.122 Loan limitations.

(a) *Dollar limits.* Guaranteed loans are limited to the following:

(1) The total outstanding combined Direct and Guaranteed FO and OL principal balance cannot exceed $700,000 and,

(2) The total outstanding direct and guaranteed FO principal balance cannot exceed $700,000 and,

(3) The total outstanding direct and guaranteed OL principal balance cannot exceed $700,000 and,

(4) The total combined outstanding direct and guaranteed FO and OL balance cannot exceed $900,000.

(b) *Line of credit advances.* The total dollar amount of line of credit advances and income releases cannot exceed the total estimated expenses, less interest expense, as indicated on the borrower's cash flow budget, unless the cash flow budget is revised and continues to reflect a feasible plan.

(c) *OL term limitations.*

(1) No guaranteed OL shall be made to any loan applicant after the 15th year that a loan applicant, or any individual signing the promissory note, first received direct or guaranteed OL.

(2) Notwithstanding paragraph (c)(1) of this section, if a borrower had any combination of direct or guaranteed OL closed in 10 or more prior calendar years prior to October 28, 1992, eligibility to receive new guaranteed OL is extended for 5 additional years from October 28, 1992, and the years need not run consecutively. However, in the case of a line of credit, each year in which an advance is made after October 28, 1992, counts toward the 5 additional years. Once determined eligible, a loan or line of credit may be approved for any authorized term.

(d) *Leased land.* When FO funds are used for improvements to leased land the terms of the lease must provide reasonable assurance that the loan applicant will have use of the improvement over its useful life, or provide compensation for any unexhausted value of the improvement if the lease is terminated.

(e) *Tax-exempt transactions.* The Agency will not guarantee any loan made with the proceeds of any obligation the interest on which is excluded from income under section 103 of the Internal Revenue Code of 1986. Funds generated through the issuance of tax-exempt obligations may not be used to purchase the guaranteed portion of any Agency guaranteed loan. An Agency guaranteed loan may not serve as collateral for a tax-exempt bond issue.

(f) *Floodplain restrictions.* The Agency will not guarantee any loan to purchase, build, or expand buildings located in a special 100 year floodplain as defined by FEMA flood hazard area maps unless flood insurance is available and purchased.

§ 762.123 Insurance and farm inspection requirements.

(a) *Insurance.*

(1) Lenders must require borrowers to maintain adequate property, public liability, and crop insurance to protect the lender and Government's interests.

(2) By loan closing, loan applicants must either:

(i) Obtain at least the catastrophic risk protection (CAT) level of crop insurance coverage, if available, for each crop of economic significance, as defined by part 402 of this title, or

(ii) Waive eligibility for emergency crop loss assistance in connection with the uninsured crop. EM loan assistance under part 1945, subpart D, of this title is not considered emergency crop loss assistance for purposes of this waiver and execution of the waiver does not render the borrower ineligible for EM loans.

(3) Loan applicants must purchase flood insurance if buildings are or will be located in a special flood hazard area as defined by FEMA flood hazard area maps and if flood insurance is available.

(4) Insurance, including crop insurance, must be obtained as required by the lender or the Agency based on the strengths and weaknesses of the loan.

(b) *Farm inspections.* Before submitting an application the lender must make an inspection of the farm to assess the suitability of the farm and to determine any development that is needed to make it a suitable farm.

§ 762.124 Interest rates, terms, charges, and fees.

(a) *Interest rates.*

(1) The interest rate on a guaranteed loan or line of credit may be fixed or variable as agreed upon between the

borrower and the lender. The lender may charge different rates on the guaranteed and the non-guaranteed portions of the note. The guaranteed portion may be fixed while the unguaranteed portion may be variable, or vice versa. If both portions are variable, different bases may be used.

(2) If a variable rate is used, it must be tied to a rate specifically agreed to between the lender and borrower in the loan instruments. Variable rates may change according to the normal practices of the lender for its average farm customers, but the frequency of change must be specified in the loan or line of credit instrument.

(3) Neither the interest rate on the guaranteed portion nor the unguaranteed portion may exceed the rate the lender charges its average agricultural loan customer. At the request of the Agency, the lender must provide evidence of the rate charged the average agricultural loan customer. This evidence may consist of average yield data, or documented administrative differential rate schedule formulas used by the lender.

(4) Interest must be charged only on the actual amount of funds advanced and for the actual time the funds are outstanding. Interest on protective advances made by the lender to protect the security will be charged at the note rate but limited to paragraph (a)(3) of this section.

(5) The lender and borrower may collectively obtain a temporary reduction in the interest rate through the interest assistance program in accordance with § 762.150.

(b) *OL terms.*

(1) Loan funds or advances on a line of credit used to pay annual operating expenses will be repaid when the income from the year's operation is received, except when the borrower is establishing a new enterprise, developing a farm, purchasing feed while feed crops are being established, or recovering from disaster or economic reverses.

(2) The final maturity date for each loan cannot exceed 7 years from the date of the promissory note or line of credit agreement. Advances for purposes other than for annual operating expenses will be scheduled for repayment over the minimum period necessary considering the loan applicant's ability to repay and the useful life of the security, but not in excess of 7 years.

(3) All advances on a line of credit must be made within 5 years from the date of the Loan Guarantee.

(c) *FO terms.* Each loan must be scheduled for repayment over a period not to exceed 40 years from the date of the note or such shorter period as may be necessary to assure that the loan will be adequately secured, taking into account the probable depreciation of the security.

(d) *Balloon installments under loan note guarantee.* Balloon payment terms are permitted on FO or OL subject to the following:

(1) Extended repayment schedules may include equal, unequal, or balloon installments if needed on any guaranteed loan to establish a new enterprise, develop a farm, or recover from a disaster or an economical reversal.

(2) Loans with balloon installments must have adequate collateral at the time the balloon installment comes due. Crops, livestock other than breeding livestock, or livestock products produced are not sufficient collateral for securing such a loan.

(3) The borrower must be projected to be able to refinance the remaining debt at the time the balloon payment comes due based on the expected financial condition of the operation, the depreciated value of the collateral, and the principal balance on the loan.

(e) *Charges and Fees.*

(1) The lender may charge the loan applicant and borrower fees for the loan provided they are no greater than those charged to unguaranteed customers for similar transactions. Similar transactions are those involving the same type of loan requested (for example, operating loans or farm real estate loans).

(2) Late payment charges (including default interest charges) are not covered by the guarantee. These charges may not be added to the principal and interest due under any guaranteed note or line of credit. However, late payment charges may be made outside of the guarantee if they are routinely made by the lender in similar types of loan transactions.

(3) Lenders may not charge a loan origination and servicing fee greater than 1 percent of the loan amount for the life of the loan when a guaranteed loan is made in conjunction with a down payment FO for beginning farmers under part 1943, subpart A, of this title.

§ 762.125 Financial feasibility.

(a) *General.*

(1) Notwithstanding any other provision of this section, PLP lenders will follow their internal procedures on financial feasibility as agreed to by the Agency during PLP certification.

(2) The loan applicant's proposed operation must project a positive cash flow.

(3) For standard eligible lenders, the projected income and expenses of the borrower and operation used to determine positive cash flow must be based on the loan applicant's proven record of production and financial management.

(4) For CLP lenders, the projected income and expenses of the borrower and the operation must be based on the loan applicant's financial history and proven record of financial management.

(5) For those farmers without a proven history, a combination of any actual history and any other reliable source of information that are agreeable with the lender, the loan applicant, and the Agency will be used.

(6) The cash flow budget analyzed to determine positive cash flow must represent the predicted cash flow of the operating cycle.

(7) Lenders must use price forecasts that are reasonable and defensible. Sources must be documented by the lender and acceptable to the Agency.

(8) When positive cash flow depends on income from other sources in addition to income from owned land, the income must be dependable and likely to continue.

(9) The lender will analyze business ventures other than the farm operation to determine their soundness and contribution to the operation. Guaranteed loan funds will not be used to finance a nonfarm enterprise. Nonfarm enterprises include, but are not limited to: raising earthworms, exotic birds, tropical fish, dogs, or horses for nonfarm purposes; welding shops; boarding horses; and riding stables.

(10) When the loan applicant has or will have a cash flow budget developed in conjunction with a proposed or existing Agency direct loan, the two cash flow budgets must be consistent.

(b) *Estimating production.*

(1) Standard eligible lenders must use the best sources of information available for estimating production in accordance with this subsection when developing cash flow budgets.

(2) Deviations from historical performance may be acceptable, if specific to changes in operation and adequately justified and acceptable to the Agency.

(3) For existing farmers, actual production for the past 3 years will be utilized.

(4) For those farmers without a proven history, a combination of any actual history and any other reliable source of information that are agreeable with the lender, the loan applicant, and the Agency will be used.

(5) When the production of a growing commodity can be estimated, it must be considered when projecting yields.

(6) When the loan applicant's production history has been so severely affected by a declared disaster that an accurate projection cannot be made, the following applies:

(i) County average yields are used for the disaster year if the loan applicant's disaster year yields are less than the county average yields. If county average yields are not available, State average yields are used. Adjustments can be made, provided there is factual evidence to demonstrate that the yield used in the farm plan is the most probable to be realized.

(ii) To calculate a historical yield, the crop year with the lowest actual or county average yield may be excluded, provided the loan applicant's yields were affected by disasters at least 2 of the previous 5 consecutive years.

(c) *Refinancing.* Loan guarantee requests for refinancing must ensure that a reasonable chance for success still exists. The lender must demonstrate that problems with the loan applicant's operation that have been identified, can be corrected, and the operation returned to a sound financial basis.

§ 762.126 Security requirements.

(a) *General.*

(1) The lender is responsible for ensuring that proper and adequate security is obtained and maintained to fully secure the loan, protect the interest of the lender and the Agency, and assure repayment of the loan or line of credit.

(2) The lender will obtain a lien on additional security when necessary to protect the Agency's interest.

(b) *Guaranteed and unguaranteed portions.*

(1) All security must secure the entire loan or line of credit. The lender may not take separate security to secure only that portion of the loan or line of credit not covered by the guarantee.

(2) The lender may not require compensating balances or certificates of deposit as means of eliminating the lender's exposure on the unguaranteed portion of the loan or line of credit. However, compensating balances or certificates of deposit as otherwise used in the ordinary course of business are allowed for both the guaranteed and unguaranteed portions.

(c) *Identifiable security.* The guaranteed loan must be secured by identifiable collateral. To be identifiable, the lender must be able to distinguish the collateral item and adequately describe it in the security instrument.

(d) *Type of security.*

(1) Guaranteed loans may be secured by any property if the term of the loan and expected life of the property will not cause the loan to be undersecured.

(2) For loans with terms greater than 7 years, a lien must be taken on real estate.

(3) Loans can be secured by a mortgage on leasehold properties if the lease has a negotiable value and is subject to being mortgaged.

(4) The lender or Agency may require additional personal and corporate guarantees to adequately secure the loan. These guarantees are separate from, and in addition to, the personal obligations arising from members of an entity signing the note as individuals.

(e) *Lien position.* All guaranteed loans will be secured by the best lien obtainable. Provided that:

(1) When the loan is made for refinancing purposes, the guaranteed loan must hold a security position no lower than on the refinanced loan.

(2) Any chattel-secured guaranteed loan must have a higher lien priority (including purchase money interest) than an unguaranteed loan secured by the same chattels and held by the same lender.

(3) Junior lien positions are acceptable only if the equity position is strong. Junior liens on crops, or livestock products will not be relied upon for security unless the lender is involved in multiple guaranteed loans to the same borrower and also has the first lien on the collateral.

(4) When taking a junior lien, prior lien instruments will not contain future advance clauses (except for taxes, insurance, or other reasonable costs to protect security), or cancellation, summary forfeiture, or other clauses that jeopardize the Government's or the lender's interest or the borrower's ability to pay the guaranteed loan, unless any such undesirable provisions are limited, modified, waived or subordinated by the lienholder for the benefit of the Agency and the lender.

(f) Additional security, or any loan of $10,000 or less may be secured by the best lien obtainable on real estate without title clearance or legal services normally required, provided the lender believes from a search of the county records that the loan applicant can give a mortgage on the farm and provided that the lender would, in the normal course of business, waive the title search. This exception to title clearance will not apply when land is to be purchased.

(g) *Multiple owners.* If security has multiple owners, all owners must execute the security documents for the loan.

(h) *Exceptions.* The Deputy Administrator for Farm Loan Programs has the authority to grant an exception to any of the requirements involving security, if the proposed change is in the best interest of the Government and the collection of the loan will not be impaired.

§ 762.127 Appraisal requirements.

(a) *General.* The Agency may require a lender to obtain an appraisal based on the type of security, loan size, and whether it is primary or additional security. Except for authorized liquidation expenses, the lender is responsible for all appraisal costs, which may be passed on to the borrower, or a transferee in the case of a transfer and assumption.

(b) *Exception.* Notwithstanding other provisions of this section, an appraisal is not required for any additional security, or for loans of $50,000 or less if a strong equity position exists.

(c) *Chattel appraisals.* A current appraisal (not more than 12 months old) of primary chattel security is generally required on all loans. An appraisal for loans or lines of credit for annual production purposes that are secured by crops is only required when a guarantee is requested late in the current production year and actual yields can be reasonably estimated. The appraised value of chattel property will be based on public sales of the same, or similar, property in the market area. In the absence of such public sales, reputable publications reflecting market values may be used. Appraisal reports may be on the Agency's appraisal of chattel property form or on any other appraisal form containing at least the same information. Chattel appraisals will be performed by appraisers who possess sufficient experience or training to establish market (not retail) values as determined by the Agency.

(d) *Real estate appraisals.* A current real estate appraisal is required when real estate will be primary security. Agency officials may accept an appraisal that is not current if there have been no significant changes in the market or on the subject real estate and the appraisal was either completed within the past 12 months or updated by a qualified appraiser if not completed within the past 12 months.

(1) Appraiser qualifications. On loan transactions of $250,000 or less, the lender must demonstrate to the Agency's satisfaction that the appraiser possesses sufficient experience or training to estimate the market value of agricultural property. On loan

transactions greater than $250,000, which includes principal plus accrued interest through the closing date, the appraisal must be completed by a State certified general appraiser.

(2) Appraisals. Real estate appraisals must be completed in accordance with the Uniform Standards of Professional Appraisal Practice. Appraisals may be either a complete or limited appraisal provided in a self-contained or summary format. Restricted reports, as defined in the Uniform Standards of Professional Appraisal Practice, are not acceptable.

§ 762.128 Environmental and special laws.

(a) *Environmental requirements.* The requirements found in part 1940, subpart G, of this title must be met for guaranteed OL and FO. CLP and PLP lenders may certify that they have documentation in their file to demonstrate compliance with paragraph (c) of this section. Standard eligible lenders must submit evidence supporting compliance with this section.

(b) *Determination.* The Agency determination of whether an environmental problem exists will be based on:

(1) The information supplied with the application;

(2) The Agency Official's personal knowledge of the operation;

(3) Environmental resources available to the Agency including, but not limited to, documents, third parties, and governmental agencies;

(4) A visit to the farm operation when the available information is insufficient to make a determination;

(5) Other information supplied by the lender or loan applicant upon Agency request. If necessary, information not supplied with the application will be requested by the Agency.

(c) *Special requirements.* Lenders will assist in the environmental review process by providing environmental information. In all cases, the lender must retain documentation of their investigation in the loan applicant's case file.

(1) A determination must be made as to whether there are any potential impacts to a 100 year floodplain as defined by Federal Emergency Management Agency floodplain maps, Natural Resources Conservation Service data, or other appropriate documentation.

(2) The lender will assist the borrower in securing any applicable permits or waste management plans. The lender may consult with the Agency for guidance on activities which require consultation with State regulatory agencies, special permitting or waste management plans.

(3) The lender will examine the security property to determine if there are any structures or archeological sites which are listed or may be eligible for listing in the National Register of Historic Places. The lender may consult with the Agency for guidance on which situations will need further review in accordance with the National Historical Preservation Act and part 1940, subpart G, and part 1901, subpart F, of this title.

(4) The loan applicant must certify they will not violate the provisions of § 363 of the CONACT, the Food Security Act of 1985, and Executive Order 11990 relating to Highly Erodible Land and Wetlands.

(5) All lenders are required to ensure that due diligence is performed in conjunction with a request for guarantee of a loan involving real estate. Due diligence is the process of evaluating real estate in the context of a real estate transaction to determine the presence of contamination from release of hazardous substances, petroleum products, or other environmental hazards and determining what effect, if any, the contamination has on the security value of the property. The Agency will accept as evidence of due diligence the most current version of the American Society of Testing Materials (ASTM) transaction screen questionnaire available from 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428–2959, or similar documentation, approved for use by the Agency, supplemented as necessary by the ASTM phase I environmental site assessments form.

(d) *Equal opportunity and nondiscrimination.*

(1) With respect to any aspect of a credit transaction, the lender will not discriminate against any applicant on the basis of race, color, religion, national origin, sex, marital status, or age, provided the applicant can execute a legal contract. Nor will the lender discriminate on the basis of whether all or a part of the applicant's income derives from any public assistance program, or whether the applicant in good faith, exercises any rights under the Consumer Protection Act.

(2) Where the guaranteed loan involves construction, the contractor or subcontractor must file all compliance reports, equal opportunity and nondiscrimination forms, and otherwise comply with all regulations prescribed by the Secretary of Labor pursuant to Executive Orders 11246 and 11375.

(e) *Other Federal, State and local requirements.* Lenders are required to coordinate with all appropriate Federal, State, and local agencies and comply with special laws and regulations applicable to the loan proposal.

§ 762.129 Percent of guarantee and maximum loss.

(a) *General.* The percent of guarantee will not exceed 90 percent based on the credit risk to the lender and the Agency both before and after the transaction. The Agency will determine the percentage of guarantee.

(b) *Exceptions.* The guarantee will be issued at 95 percent in any of the following circumstances:

(1) The sole purpose of a guaranteed FO or OL is to refinance an Agency direct farm loan. When only a portion of the loan is used to refinance a direct Agency farm credit program loan, a weighted percentage of a guarantee will be provided;

(2) When the purpose of an FO guarantee is to participate in the down payment loan program; or

(3) When a guaranteed OL is made to a farmer or rancher who is participating in the Agency's down payment loan program. The guaranteed OL must be made during the period that a borrower has the down payment loan outstanding.

(c) *CLP and PLP guarantees.* All guarantees issued to CLP or PLP lenders will not be less than 80 percent.

(d) *Maximum loss.* The maximum amount the Agency will pay the lender under the loan guarantee will be any loss sustained by such lender on the guaranteed portion including:

(1) The pro rata share of principal and interest indebtedness as evidenced by the note or by assumption agreement;

(2) Any loan subsidy due and owing;

(3) The pro rata share of principal and interest indebtedness on secured protective and emergency advances made in accordance with this subpart; and

(4) Principal and interest indebtedness on recapture debt pursuant to a shared appreciation agreement. Provided that the lender has paid the Agency its pro rata share of the recapture amount due.

§ 762.130 Loan approval and issuing the guarantee.

(a) *Processing timeframes.*

(1) Standard Eligible Lenders. Complete applications from Standard Eligible Lenders will be approved or rejected, and the lender notified in writing, no later than 30 calendar days after receipt.

(2) CLP and PLP lenders.

(i) Complete applications from CLP or PLP lenders will be approved or rejected not later than 14 calendar days after receipt.

(ii) For PLP lenders, if this time frame is not met, the proposed guaranteed loan will automatically be approved, subject to funding, and receive an 80 or 95 percent guarantee, as appropriate.

(3) Complete applications. For purposes of determining the application processing timeframes, an application will be not be considered complete until all information required to make an approval decision, including the information for an environmental review, is received by the Agency.

(4) The Agency will confirm the date an application is received with a written notification to the lender.

(b) *Funding preference.* Loans are approved subject to the availability of funding. When it appears that there are not adequate funds to meet the needs of all approved loan applicants, applications that have been approved will be placed on a preference list according to the date of receipt of a complete application. If approved applications have been received on the same day, the following will be given priority:

(1) An application from a veteran

(2) An application from an Agency direct loan borrower

(3) An application from a loan applicant who:

(i) Has a dependent family,

(ii) Is an owner of livestock and farm implements necessary to successfully carry out farming operations, or

(iii) Is able to make down payments.

(4) Any other approved application.

(c) *Conditional commitment.*

(1) The lender must meet all of the conditions specified in the conditional commitment to secure final Agency approval of the guarantee.

(2) The lender, after reviewing the conditions listed on the conditional commitment, will complete, execute, and return the form to the Agency. If the conditions are not acceptable to the lender, the Agency may agree to alternatives or inform the lender and the loan applicant of their appeal rights.

(d) *Lender requirements prior to issuing the guarantee.*

(1) Lender certification. The lender will certify as to the following on the appropriate Agency form:

(i) No major changes have been made in the lender's loan or line of credit conditions and requirements since submission of the application (except those approved in the interim by the Agency in writing);

(ii) Required hazard, flood, crop, worker's compensation, and personal life insurance (when required) are in effect;

(iii) Truth in lending requirements have been met;

(iv) All equal employment and equal credit opportunity and nondiscrimination requirements have been or will be met at the appropriate time;

(v) The loan or line of credit has been properly closed, and the required security instruments have been obtained, or will be obtained, on any acquired property that cannot be covered initially under State law;

(vi) The borrower has marketable title to the collateral owned by the borrower, subject to the instrument securing the loan or line of credit to be guaranteed and subject to any other exceptions approved in writing by the Agency. When required, an assignment on all USDA crop and livestock program payments has been obtained;

(vii) When required, personal, joint operation, partnership, or corporate guarantees have been obtained;

(viii) Liens have been perfected and priorities are consistent with requirements of the conditional commitment;

(ix) Loan proceeds have been, or will be disbursed for purposes and in amounts consistent with the conditional commitment and as specified on the loan application. In line of credit cases, if any advances have occurred, advances have been disbursed for purposes and in amounts consistent with the conditional commitment and line of credit agreements;

(x) There has been no material adverse change in the borrower's condition, financial or otherwise, since submission of the application; and

(xi) All other requirements specified in the conditional commitment have been met.

(2) Inspections. The lender must notify the Agency of any scheduled inspections during construction and after the guarantee has been issued. The Agency may attend these field inspections. Any inspections or review performed by the Agency, including those with the lender, are solely for the benefit of the Agency. Agency inspections do not relieve any other parties of their inspection responsibilities, nor can these parties rely on Agency inspections for any purpose.

(3) Execution of lender's agreement. The lender must execute the Agency's lender's agreement and deliver it to the Agency.

(4) Closing report and guarantee fees.

(i) The lender must complete an Agency closing report form and return it to the Agency along with any guarantee fees.

(ii) Guarantee fees are 1 percent and are calculated as follows: Fee = Loan Amount x % Guaranteed x .01. The nonrefundable fee is paid to the Agency by the lender. The fee may be passed on to the borrower and included in loan funds.

(iii) The following guaranteed loan transactions are not charged a fee:

(A) Loans involving interest assistance;

(B) Loans where a majority of the funds are used to refinance an Agency direct loan; and

(C) Loans to beginning farmers or ranchers involved in the direct beginning farmer downpayment program.

(e) *Promissory notes, line of credit agreements, mortgages, and security agreements.* The lender will use its own promissory notes, line of credit agreements, real estate mortgages (including deeds of trust and similar instruments), and security agreements (including chattel mortgages in Louisiana and Puerto Rico), provided:

(1) The forms meet Agency requirements;

(2) Documents comply with State law and regulation;

(3) The principal and interest repayment schedules are stated clearly in the notes and are consistent with the conditional commitment;

(4) The note is executed by the individual liable for the loan. For entities, the note is executed by the member who is authorized to sign for the entity, and by all members of the entity as individuals. Individual liability can be waived by the Agency for members holding less than 10 percent ownership in the entity if the collectability of the loan will not be impaired; and

(5) When the loan purpose is to refinance or restructure the lender's own debt, the lender may continue to use the existing debt instrument and attach an allonge that modifies the terms of the original note.

(f) *Replacement of loan guarantee, or assignment guarantee agreement.* If the guarantee or assignment guarantee agreements are lost, stolen, destroyed, mutilated, or defaced, except where the evidence of debt was or is a bearer instrument, the Agency will issue a replacement to the lender or holder upon receipt of acceptable documentation including a certificate of loss and an indemnity bond.

§§ 762.131–762.139 [Reserved]

§ 762.140 General servicing responsibilities.

(a) General.

(1) Lenders are responsible for servicing the entire loan in a reasonable

and prudent manner, protecting and accounting for the collateral, and remaining the mortgagee or secured party of record.

(2) The lender cannot enforce the guarantee to the extent that a loss results from a violation of usury laws or negligent servicing.

(b) *Borrower supervision.* The lender's responsibilities regarding borrower supervision include, but are not limited to the following:

(1) Ensuring loan funds are not used for unauthorized purposes.

(2) Ensuring borrower compliance with the covenants and provisions contained in the promissory note, loan agreement, mortgage, security instruments, any other agreements, and this part. Any violations which indicate non-compliance on the part of the borrower must be reported, in writing, to both the Agency and the borrower.

(3) Ensuring the borrower is in compliance with all laws and regulations applicable to the loan, the collateral, and the operations of the farm.

(4) Receiving all payments of principal and interest on the loan as they fall due and promptly disbursing to any holder its pro-rata share according to the amount of interest the holder has in the loan, less only the lender's servicing fee.

(5) Performing an annual analysis of the borrower's financial condition to determine the borrower's progress. The annual analysis will include:

(i) For loans secured by real estate only, the analysis for standard eligible lenders must include an analysis of the borrower's balance sheet. CLP lenders will determine the need for the annual analysis based on the financial strength of the borrower and document the file accordingly. PLP lenders will perform an annual analysis in accordance with the requirements established in the lender's agreement.

(ii) For loans secured by chattels, all lenders will review the borrower's progress regarding business goals, trends and changes in financial performance, and compare actual to planned income and expenses for the past year.

(iii) An account of the whereabouts or disposition of all collateral.

(iv) A discussion of any observations about the farm business with the borrower.

(c) *Monitoring of development.* The lender's responsibilities regarding the construction, repairs, or other development include, but are not limited to:

(1) Determining that all construction is completed as proposed in the loan application;

(2) Making periodic inspections during construction to ensure that any development is properly completed within a reasonable period of time; and

(3) Verification that the security is free of any mechanic's, materialmen's, or other liens which would affect the lender's lien or result in a different lien priority from that proposed in the request for guarantee.

(d) The guaranteed loan installments will be paid before unguaranteed loans held by the same lender.

§ 762.141 Reporting requirements.

Lenders are responsible for providing the local Agency credit officer with all of the following information on the loan and the borrower:

(a) When the guaranteed loan becomes 30 days past due, and following the lender's meeting or attempts to meet with the borrower, all lenders will submit the appropriate Agency form showing guaranteed loan borrower default status. The form will be resubmitted every 60 days until the default is cured either through restructuring or liquidation.

(b) All lenders will submit the appropriate guaranteed loan status reports as of March 31 and September 30 of each year;

(c) CLP lenders also must provide the following:

(1) A written summary of the lender's annual analysis of the borrower's operation. This summary should describe the borrower's progress and prospects for the upcoming operating cycle. This annual analysis may be waived or postponed if the borrower is financially strong. The summary will include a description of the reasons an analysis was not necessary.

(2) For lines of credit, an annual certification stating that a cash flow projecting at least a feasible plan has been developed, that the borrower is in compliance with the provisions of the line of credit agreement, and that the previous year income and loan funds and security proceeds have been accounted for.

(d) In addition to the requirements of paragraphs (a), (b), and (c) of this section, the standard eligible lender also will provide:

(1) Borrower's balance sheet, and income and expense statement for the previous year.

(2) For lines of credit, the cash flow for the borrower's operation that projects a feasible plan or better for the upcoming operating cycle. The standard eligible lender must receive approval from the Agency before advancing future years' funds.

(3) An annual farm visit report or collateral inspection.

(e) PLP lenders will submit additional reports as required in their lender's agreement.

(f) A lender receiving a final loss payment must complete and return an annual report on its collection activities for each unsatisfied account for 3 years following payment of the final loss claim.

§ 762.142 Servicing related to collateral.

(a) *General.* The lender's responsibilities regarding servicing collateral include, but are not limited to, the following:

(1) Obtain income and insurance assignments when required.

(2) Ensure the borrower has or obtains marketable title to the collateral.

(3) Inspect the collateral as often as deemed necessary to properly service the loan.

(4) Ensure the borrower does not convert loan security.

(5) Ensure the proceeds from the sale or other disposition of collateral are accounted for and applied in accordance with the lien priorities on which the guarantee is based or used for the purchase of replacement collateral.

(6) Ensure the loan and the collateral are protected in the event of foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation.

(7) Ensure taxes, assessments, or ground rents against or affecting the collateral are paid.

(8) Ensure adequate insurance is maintained.

(9) Ensure that insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or used to rebuild or acquire needed replacement collateral.

(b) *Partial releases.*

(1) A lender may release guaranteed loan security without FSA concurrence as follows:

(i) When the security item is being sold for market value and the proceeds will be applied to the loan in accordance with lien priorities. In the case of term loans, proceeds will be applied as extra payments and not as a regular installment on the loan.

(ii) The security item will be used as a trade-in or source of down payment funds for a like item that will be taken as security.

(iii) The security item has no present or prospective value.

(2) A partial release of security may be approved in writing by the Agency upon the lender's request when:

(i) Proceeds will be used to make improvements to real estate that increase the value of the security by an amount equal to or greater than the value of the security being released.

(ii) Security will be released outright with no consideration, but the total unpaid balance of the guaranteed loan is less than or equal to 75 percent of the value of the security for the loan after the release, excluding the value of growing crops or planned production, based on a current appraisal of the security.

(iii) Significant income generating property will not be released unless it is being replaced and business assets will not be released for use as a gift or any similar purpose.

(iv) Agency concurrence is provided in writing to the lender's written request. Standard eligible lenders and CLP lenders will submit the following to the Agency:

(A) A current balance sheet on the borrower; and

(B) A current appraisal of the security. Based on the level of risk and estimated equity involved, the Agency will determine what security needs to be appraised. Any required security appraisals must meet the requirements of § 762.127; and

(C) A description of the purpose of the release; and

(D) Any other information requested by the Agency to evaluate the proposed servicing action.

(3) The lender will provide the Agency copies of any agreements executed to carry out the servicing action.

(4) PLP lenders will request servicing approval in accordance with their agreement with the Agency at the time of PLP status certification.

(c) *Subordinations.*

(1) The Agency may subordinate its security interest on a direct loan when a guaranteed loan is being made if the requirements of the regulations governing Agency direct loan subordinations are met and only in the following circumstances:

(i) To permit a guaranteed lender to advance funds and perfect a security interest in crops, feeder livestock, livestock offspring, or livestock products;

(ii) When the lender requesting the guarantee needs the subordination of the Agency's lien position to maintain its lien position when servicing or restructuring;

(iii) When the lender requesting the guarantee is refinancing the debt of another lender and the Agency's position on real estate security will not be adversely affected; or

(iv) To permit a line of credit to be advanced for annual operating expenses.

(2) The Agency may subordinate its basic security in a direct loan to permit guaranteed line of credit only when both of the following additional conditions are met:

(i) The total unpaid balance of the direct loans is less than or equal to 75 percent of the value of all of the security for the direct loans, excluding the value of growing crops or planned production, at the time of the subordination. The direct loan security value will be determined by an appraisal. The lender requesting the subordination and guarantee is responsible for providing the appraisal and may charge the applicant a reasonable appraisal fee.

(ii) The applicant cannot obtain sufficient credit through a conventional guaranteed loan without a subordination.

(3) The lender may not subordinate its interest in property which secures a guaranteed loan except as follows:

(i) The lender may subordinate its security interest in crops, feeder livestock, livestock offspring, or livestock products when no funds have been advanced from the guaranteed loan for their production, so a lender can make a loan for annual production expenses; or

(ii) The Agency's national office may provide an exception to the subordination prohibition if such action is in the Agency's best interest. However, in no case can the loan made under the subordination include tax exempt financing.

(d) *Transfer and assumption.* Transfers and assumptions are subject to the following conditions:

(1) For standard eligible and CLP lenders, the servicing action must be approved by the Agency in writing.

(2) For standard eligible and CLP lenders, the transferee must apply for a loan in accordance with § 762.110, including a current appraisal, unless the lien position of the guaranteed loan will not change, and any other information requested by the Agency to evaluate the transfer and assumption.

(3) PLP lenders may process transfers and assumptions in accordance with their agreement with the Agency.

(4) Any required security appraisals must meet the requirements of § 762.127.

(5) The Agency will review, approve or reject the request in accordance with the time frames in § 762.130.

(6) The transferee must meet the eligibility requirements and loan limitations for the loan being transferred, all requirements relating to loan rates and terms, loan security, feasibility, and environmental and other laws applicable to a loan applicant under this part.

(7) The lender will use its own assumption agreements or conveyance instruments, providing they are legally sufficient to obligate the transferee for the total outstanding debt. The lender will provide the Agency copies of any agreements executed to carry out the servicing action.

(8) The lender must execute a modification of the guarantee provided by the Agency to designate the party that assumed the guaranteed debt, the amount of debt at the time of the assumption (including interest that being capitalized), and the new loan terms, if applicable.

(9) The lender must give any holder notice of the transfer. If the rate and terms are changed, written concurrence from the holder is required.

(10) The Agency will agree to releasing the transferor or any guarantor from liability only if the requirements of § 762.146(c) are met.

§ 762.143 Servicing distressed accounts.

(a) A borrower is in default when 30 days past due on a payment or in violation of provisions of the loan documents.

(b) In the event of a borrower default, SEL and CLP lenders will:

(1) Report to the Agency in accordance with § 762.141.

(2) Determine whether it will repurchase the guaranteed portion from the holder in accordance with § 762.144, if the guaranteed portion of the loan was sold on the secondary market.

(3) Arrange a meeting with the borrower within 15 days of default (45 days after payment due date for monetary defaults) to identify the nature of the delinquency and develop a course of action that will eliminate the delinquency and correct the underlying problems. Non-monetary defaults will be handled in accordance with the lender's note, loan agreements and any other applicable loan documents.

(i) The lender and borrower will prepare a current balance sheet and cash flow projection in preparation for the meeting. If the borrower refuses to cooperate, the lender will compile the best financial information available.

(ii) The lender or the borrower may request the attendance of an Agency credit officer. If requested, the Agency credit officer will assist in developing solutions to the borrower's financial problems.

(iii) The lender will summarize the meeting and proposed solutions on the Agency form for guaranteed loan

borrower default status completed after the meeting. The lender will indicate the results on this form for the lender's consideration of the borrower for interest assistance in conjunction with rescheduling under § 762.145(b).

(iv) The lender must decide whether to restructure or liquidate the account within 90 days of default, unless the lender can document circumstances that justify an extension by the Agency.

(v) The lender may not initiate foreclosure action on the loan until 60 days after eligibility of the borrower to participate in the interest assistance programs has been determined by the Agency. If the lender or the borrower does not wish to consider servicing options under this section, this should be documented, and liquidation under § 762.149 should begin.

(vi) If a borrower is current on a loan, but will be unable to make a payment, a restructuring proposal may be submitted in accordance with § 762.145 prior to the payment coming due.

(c) PLP lenders will service defaulted loans according to their lender's agreement.

§ 762.144 Repurchase of guaranteed portion from a secondary market holder.

(a) *Request for repurchase.* The holder may request the lender to repurchase the unpaid guaranteed portion of the loan when:

(1) The borrower has not made a payment of principal and interest due on the loan for at least 60 days; or

(2) The lender has failed to remit to the holder its pro-rata share of any payment made by the borrower within 30 days of receipt of a payment.

(b) *Repurchase by the lender.*

(1) When a lender is requested to repurchase a loan from the holder, the lender must consider the request according to the servicing actions that are necessary on the loan. In order to facilitate servicing and simplified accounting of loan transactions, lenders are encouraged to repurchase the loan upon the holder's request.

(2) The repurchase by the lender will be for an amount equal to the portion of the loan held by the holder plus accrued interest.

(3) The guarantee will not cover separate servicing fees that the lender accrues after the repurchase.

(c) *Repurchase by the Agency.*

(1) If the lender does not repurchase the loan, the holder must inform the Agency in writing that demand was made on the lender and the lender refused. Following the lender's refusal, the holder may continue as holder of the guaranteed portion of the loan or request that the Agency purchase the guaranteed portion. Within 30 days after written demand to the Agency from the holder with required attachments, the Agency will forward to the holder payment of the unpaid principal balance, with accrued interest to the date of repurchase. If the holder does not desire repurchase or purchase of a defaulted loan, the lender must forward the holder its pro-rata share of payments, liquidation proceeds and Agency loss payments.

(2) With its demand on the Agency, the holder must include:

(i) A copy of the written demand made upon the lender.

(ii) Originals of the guarantee and note properly endorsed to the Agency, or the original of the assignment of guarantee.

(iii) A copy of any written response to the demand of the holder by the lender.

(iv) An account to which the Agency can forward the purchase amount via electronic funds transfer.

(3) The amount due the holder from the Agency includes unpaid principal, unpaid interest to the date of demand, and interest which has accrued from the date of demand to the proposed payment date.

(i) Upon request by the Agency, the lender must furnish upon Agency request a current statement, certified by a bank officer, of the unpaid principal and interest owed by the borrower and the amount due the holder.

(ii) Any discrepancy between the amount claimed by the holder and the information submitted by the lender must be resolved by the lender and the holder before payment will be approved by the Agency. The Agency will not participate in resolution of any such discrepancy. When there is a discrepancy, the 30 day Agency payment requirement to the holder will be suspended until the discrepancy is resolved.

(iii) In the case of a request for Agency purchase, the government will only pay interest that accrues for up to 90 days from the date of the demand letter to the lender requesting the repurchase. However, if the lender requested repurchase from the Agency within 60 days of the request to the holder and for any reason not attributable to the holder and the lender, the Agency cannot make payment within 30 days of the holder's demand to the Agency, the holder will be entitled to interest to the date of the payment.

(4) At the time of purchase by the Agency, the original assignment of guarantee will be assigned by the holder to the Agency without recourse, including all rights, title, and interest in the loan.

(5) Purchase by the Agency does not change, alter, or modify any of the lender's obligations to the Agency specified in the lender's agreement or guarantee; nor does the purchase waive any of the Agency's rights against the lender.

(6) The Agency succeeds to all rights of the holder under the Guarantee including the right of set-off against the lender.

(7) Within 180 days of the Agency's purchase, the lender will reimburse the Agency the amount of repurchase, with accrued interest, through one of the following ways:

(i) By liquidating the loan security and paying the Agency its pro-rata share of liquidation proceeds; or

(ii) Paying the Agency the full amount the Agency paid to the holder plus any accrued interest.

(8) The lender will be liable for the purchase amount and any expenses incurred by the Agency to maintain the loan in its portfolio or liquidate the security. While the Agency holds the guaranteed portion of the loan, the lender will transmit to the Agency any payment received from the borrower, including the pro-rata share of liquidation or other proceeds.

(9) If the borrower files for reorganization under the provisions of the bankruptcy code or pays the account current while the purchase by the Government is being processed, the Agency may hold the loan as long it determines this action to be in the Agency's interest. If the lender is not proceeding expeditiously to collect the loan or reimbursement is not waived under this paragraph, the Agency will demand payment by the lender and collect the purchase amount through administrative offset of any claims due the lender.

(10) The Agency may sell a purchased guaranteed loan on a non-recourse basis if it determines that selling the portion of the loan that it holds is in the Government's best interest. A non-recourse purchase from the Agency requires a written request to the Agency from the party that wishes to purchase it, and written concurrence from the lender;

(d) *Repurchase for servicing.*

(1) If, due to loan default or imminent loan restructuring, the lender determines that repurchase is necessary to adequately service the loan, the lender may repurchase the guaranteed portion of the loan from the holder, with the written approval of the Agency.

(2) The lender will not repurchase from the holder for arbitrage purposes. With its request for Agency concurrence, the lender will notify the

Agency of its plans to resell the guaranteed portion following servicing.

(3) The holder will sell the guaranteed portion of the loan to the lender for an amount agreed to between the lender and holder.

§ 762.145 Restructuring guaranteed loans.

(a) *General.*

(1) To restructure guaranteed loans standard eligible lenders must:

(i) Obtain prior written approval of the Agency for all restructuring actions; and,

(ii) Provide the items in paragraph (b) and (e) of this section to the Agency for approval.

(2) If the standard eligible lender's proposal for servicing is not agreed to by the Agency, the Agency approval official will notify the lender in writing within 14 days of the lender's request.

(3) To restructure guaranteed loans CLP lenders must:

(i) Obtain prior written approval of the Agency only for debt write down under this section.

(ii) Submit all calculations required in paragraph (e) of this section for debt writedown.

(iii) For restructuring other than write down, provide FSA with a certification that each requirement of this section has been met, a narrative outlining the circumstances surrounding the need for restructuring, and copies of any applicable calculations.

(4) PLP lenders will restructure loans in accordance with their lender's agreement.

(5) All lenders will submit copies of any restructured notes or lines of credit to the Agency.

(b) *Requirements.* For any restructuring action, the following conditions apply:

(1) The borrower meets the eligibility criteria of § 762.120, except the provisions regarding prior debt forgiveness and delinquency on a federal debt do not apply.

(2) The borrower's ability to make the amended payment is documented by the following:

(i) A feasible plan (see § 762.102(b)). If interest assistance is required to achieve a feasible plan, the items required by § 762.150(d) must be submitted with a restructuring request. Feasible plan is defined in § 762.102(b).

(ii) Current financial statements from all liable parties.

(iii) Verification of nonfarm income.

(iv) Verification of all debts of $1,000 or more.

(v) Applicable credit reports.

(vi) Financial history (and production history for standard eligible lenders) for the past 3 years to support the cash flow projections.

(3) A final loss claim may be reduced, adjusted, or rejected as a result of negligent servicing after the concurrence with a restructuring action under this section.

(4) Balloon payments are prohibited; however, the loan can be restructured with unequal installments, provided that, in addition to a feasible plan for the upcoming operating cycle, a feasible plan can be reasonably projected after the installments increase. Feasible plan is defined in § 762.102(b).

(5) If a borrower is current on a loan, but will be unable to make a payment, a restructuring proposal may be submitted prior to the payment coming due.

(6) The lender may capitalize the outstanding interest when restructuring the loan as follows:

(i) As a result of the capitalization of interest, a rescheduled promissory note may increase the amount of principal which the borrower is required to pay. However, in no case will such principal amount exceed the statutory loan limits contained in § 762.122.

(ii) When accrued interest causes the loan amount to exceed the statutory loan limits, rescheduling may be approved without capitalization of the amount that exceeds the limit. Noncapitalized interest may be scheduled for repayment over the term of the rescheduled note.

(iii) Only interest that has accrued at the rate indicated on the borrower's original promissory notes may be capitalized. Late payment fees or default interest penalties that have accrued due to the borrower's failure to make payments as agreed are not covered under the guarantee and may not be capitalized.

(iv) The Agency will provide the lender with a modification of guarantee form to identify the new loan principal and the guaranteed portion if greater than the original loan amounts, and to waive the restriction on capitalization of interest, if applicable, to the existing guarantee documents. The modification form will be attached to the original guarantee as an addendum.

(v) Approved capitalized interest will be treated as part of the principal and interest that accrues thereon, in the event that a loss should occur.

(7) The lender's security position will not be adversely affected because of the restructuring. New security instruments may be taken if needed, but a loan does not have to be fully secured in order to be restructured.

(8) Any holder agrees in writing to any changes in the original loan terms, including the approval of interest assistance. If the holder does not agree, the lender must repurchase the loan from the holder for any loan restructuring to occur.

(9) After a guaranteed loan is restructured, the lender must provide the Agency with a copy of the restructured promissory note.

(c) *Rescheduling.* The following conditions apply when a guaranteed loan is rescheduled or reamortized:

(1) Payments will be rescheduled within the following terms:

(i) FO and existing SW may be amortized over the remaining term of the note or rescheduled with an uneven payment schedule. The maturity date cannot exceed 40 years from the date of the original note.

(ii) OL notes must be rescheduled over a period not to exceed 15 years from the date of the rescheduling. An OL line of credit may be rescheduled over a period not to exceed 7 years from the date of the rescheduling or 10 years from the date of the original note, whichever is less. Advances cannot be made against a line of credit loan that has had any portion of the loan rescheduled.

(2) The interest rate for a rescheduled loan is the negotiated rate agreed upon by the lender and the borrower at the time of the action, subject to the loan limitations for each type of loan.

(3) A new note is not necessary when rescheduling occurs. However, if a new note is not taken, the existing note or line of credit agreement must be modified by attaching an allonge or other legally effective amendment, evidencing the revised repayment schedule and any interest rate change. If a new note is taken, the new note must reference the old note and state that the indebtedness evidenced by the old note or line of credit agreement is not satisfied. The original note or line of credit agreement must be retained.

(d) *Deferrals.* The following conditions apply to deferrals:

(1) Payments may be deferred up to 5 years, but the loan may not be extended beyond the final due date of the note.

(2) The principal portion of the payment may be deferred either in whole or in part.

(3) Interest may be deferred only in part. Payment of a reasonable portion of accruing interest as indicated by the borrower's cash flow projections is required for multi-year deferrals.

(4) There must be a reasonable prospect that the borrower will be able to resume full payments at the end of the deferral period.

(e) *Debt writedown.* The following conditions apply to debt writedown:

(1) A lender may only write down a delinquent guaranteed loan or line of

credit in an amount sufficient to permit the borrower to develop a feasible plan as defined in § 762.102(b).

(2) The lender will request other creditors to negotiate their debts before a writedown is considered.

(3) The borrower cannot develop a feasible plan after consideration is given to rescheduling and deferral under this section.

(4) The present value of the loan to be written down, based on the interest rate of the rescheduled loan, will be equal to or exceed the net recovery value of the loan collateral.

(5) The loan will be restructured with regular payments at terms no shorter than 5 years for a line of credit and OL note and no shorter than 20 years for FO, unless required to be shorter by § 762.145(c)(1)(i) and (ii).

(6) No further advances may be made on a line of credit that is written down.

(7) Loans may not be written down with interest assistance. If a borrower's loan presently on interest assistance requires a writedown, the writedown will be considered without interest assistance. If approved, the existing interest assistance agreement will be canceled.

(8) The writedown is based on writing down the shorter-term loans first.

(9) When a lender requests approval of a writedown for a borrower with multiple loans, the security for all of the loans will be cross-collateralized and continue to serve as security for the loan that is written down. If a borrower has multiple loans and one loan is written off entirely through debt writedown, the security for that loan will not be released and will remain as security for the other written down debt. Additional security instruments will be taken if required to cross-collateralize security and maintain lien priority.

(10) The writedown will be evidenced by an allonge or amendment to the existing note or line of credit reflecting the writedown.

(11) The borrower executes an Agency shared appreciation agreement for loans which are written down and secured by real estate.

(i) The lender will attach the original agreement to the restructured loan document.

(ii) The lender will provide the Agency a copy of the executed agreement, and

(iii) Security instruments must ensure future collection of any appreciation under the agreement.

(12) The lender will prepare and submit the following to the Agency:

(i) A current appraisal of all security in accordance with § 762.127.

(ii) A completed report of loss on the appropriate Agency form for the proposed writedown loss claim.

(iii) Detailed writedown calculations as follows:

(A) Calculate the present value.

(B) Determine the net recovery value.

(C) If the net recovery value exceeds the present value, writedown is unavailable; liquidation becomes the next servicing consideration. If the present value equals or exceeds the net recovery value, the debt may be written down to the present value.

(iv) The lender will make any adjustment in the calculations as requested by the Agency.

§ 762.146 Other servicing procedures.

(a) *Additional loans and advances.*

(1) Notwithstanding any provision of this section, the PLP lender may make additional loans or advances in accordance with the lender's agreement with the Agency.

(2) SEL and CLP lenders must not make additional loans or advances without prior written approval of the Agency, except as provided in the borrower's loan or line of credit agreement.

(3) In cases of a guaranteed line of credit, lenders may make an emergency advance when a line of credit has reached its ceiling. The emergency advance will be made as an advance under the line and not as a separate note. The lender's loan documents must contain sufficient language to provide that any emergency advance will constitute a debt of the borrower to the lender and be secured by the security instrument. The following conditions apply:

(i) The loan funds to be advanced are for authorized operating loan purposes;

(ii) The financial benefit to the lender and the Government from the advance will exceed the amount of the advance; and

(iii) The loss of crops or livestock is imminent unless the advance is made.

(4) Protective advance requirements are found in § 762.149.

(b) *Release of liability upon withdrawal.* An individual who is obligated on a guaranteed loan may be released from liability by a lender, with the written consent of the Agency, provided the following conditions have been met:

(1) The individual to be released has withdrawn from the farming or ranching operation;

(2) A divorce decree or final property settlement does not hold the withdrawing party responsible for the loan payments;

(3) The withdrawing party's interest in the security is conveyed to the individual or entity with whom the loan will be continued;

(4) The ratio of the amount of debt to the value of the remaining security is less than or equal to .75, or the withdrawing party has no income or assets from which collection can be made; and

(5) Withdrawal of the individual does not result in legal dissolution of the entity to which the loans are made. Individually liable members of a general or limited partnership may not be released from liability.

(6) The remaining liable party projects a feasible plan (see § 762.102(b)).

(c) *Release of liability after liquidation.* After a final loss claim has been paid on the borrower's account, the lender may release the borrower or guarantor from liability if;

(1) The Agency agrees to the release in writing;

(2) The lender documents its consideration of the following factors concerning the borrower or guarantors:

(i) The likelihood that the borrower or guarantor will have a sufficient level of income in the reasonably near future to contribute to a meaningful reduction of the debt;

(ii) The prospect that the borrower or guarantor will inherit assets in the near term that may be attached by the Agency for payment of a significant portion of the debt;

(iii) Whether collateral has been properly accounted for, and whether liability should be retained in order to take action against the borrower or a third party for conversion of security;

(iv) The availability of other income or assets which are not security;

(v) The possibility that assets have been concealed or improperly transferred;

(vi) The effect of other guarantors on the loan; and

(vii) Cash consideration or other collateral in exchange for the release of liability.

(3) The lender will use its own release of liability documents.

(d) *Interest rate changes.*

(1) The lender may change the interest rate on a performing (nondelinquent) loan only with the borrower's consent.

(2) If the loan has been sold on the secondary market, the lender must repurchase the loan or obtain the holder's written consent.

(3) To change a fixed rate of interest to a variable rate of interest or vice versa, the lender and the borrower must execute a legally effective allonge or amendment to the existing note.

(4) If a new note is taken, it will be attached to and refer to the original note.

(5) The lender will inform the Agency of the rate change.

(e) *Consolidation.* Two or more Agency guaranteed loans may be consolidated, subject to the following conditions:

(1) The borrower must project a feasible plan after the consolidation. See § 762.102(b) for definition of feasible plan.

(2) Only OL may be consolidated.

(3) Existing lines of credit may only be consolidated with a new line of credit if the final maturity date and conditions for advances of the new line of credit are made the same as the existing line of credit.

(4) Guaranteed OL may not be consolidated with a line of credit, even if the line of credit has been rescheduled.

(5) Guaranteed loans made prior to October 1, 1991, cannot be consolidated with those loans made on or after October 1, 1991.

(6) OL secured by real estate or with an outstanding interest assistance agreement or shared appreciation agreement cannot be consolidated.

(7) A new note or line of credit agreement will be taken. The new note or line of credit agreement must describe the note or line of credit agreement being consolidated and must state that the indebtedness evidenced by the note or line of credit agreement is not satisfied. The original note or line of credit agreement must be retained.

(8) The interest rate for a consolidated OL loan is the negotiated rate agreed upon by the lender and the borrower at the time of the action, subject to the loan limitations for each type of loan.

(9) A modification of guarantee will be executed. The modification will indicate the consolidated loan amount, new terms, and percentage of guarantee, and will be attached to the originals of the guarantees being consolidated. If loans with a different guarantee percentage are consolidated, the new guarantee will be at the lowest percentage of guarantee being consolidated.

(10) Any holders must consent to the consolidation, or the guaranteed portion must be repurchased by the lender.

§ 762.147 Servicing shared appreciation agreements.

(a) *Lender responsibilities.* The lender is responsible for:

(1) Monitoring the borrower's compliance with the shared appreciation agreement;

(2) Notifying the borrower of the amount of recapture due; and,

(3) Beginning October 1, 1999, a notice of the agreement's provisions not later than 12 months before the end of the agreement; and

(4) Reimbursing the Agency for its pro-rata share of recapture due.

(b) *Recapture.*

(1) Recapture of any appreciation of real estate security will take place at the end of the term of the agreement, or sooner if the following occurs:

(i) On the conveyance of the real estate security (or a portion thereof) by the borrower.

(A) If only a portion of the real estate is conveyed, recapture will only be triggered against the portion conveyed. Partial releases will be handled in accordance with § 762.141(b).

(B) Transfer of title to the spouse of the borrower on the death of such borrower will not be treated as a conveyance under the agreement.

(ii) On repayment of the loan; or

(iii) If the borrower ceases farming.

(2) Calculating recapture.

(i) The amount of recapture will be based on the difference between the value of the security at the time recapture is triggered and the value of the security at the time of writedown, as shown on the shared appreciation agreement.

(ii) Security values will be determined through appraisals obtained by the lender and meeting the requirements of § 762.127.

(iii) All appraisal fees will be paid by the lender.

(iv) The amount of recapture will not exceed the amount of writedown shown on the shared appreciation agreement.

(v) If recapture is triggered within 4 years of the date of the shared appreciation agreement, the lender shall recapture 75 percent of any positive appreciation in the market value of the property securing the loan or line of credit agreement.

(vi) If recapture is triggered after 4 years from the date of the shared appreciation agreement, the lender shall recapture 50 percent of any positive appreciation in the market value of the property securing the loan or line of credit agreement.

(3) Servicing recapture debt.

(i) If recapture is triggered under the shared appreciation agreement and the borrower is unable to pay the recapture in a lump sum, the lender may:

(A) Reschedule the recapture debt with the consent of the Agency, provided the lender can document the borrower's ability to make amortized payments on the recapture debt, plus pay all other obligations. In such case, the recapture debt will not be covered by the guarantee;

(B) Pay the Agency its pro rata share of the recapture due. In such case, the recapture debt of the borrower will be covered by the guarantee; or

(C) Service the account in accordance with § 762.149.

(ii) If recapture is triggered, and the borrower is able but unwilling to pay the recapture in a lump sum, the lender will service the account in accordance with § 762.149.

(4) Paying the Agency. Any shared appreciation recaptured by the lender will be shared on a pro-rata basis between the lender and the Agency.

§ 762.148 Bankruptcy.

(a) *Lender responsibilities.* The lender must protect the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings. The lender's responsibilities include, but are not limited to:

(1) Filing a proof of claim where required and all the necessary papers and pleadings;

(2) Attending, and where necessary, participating in meetings of the creditors and court proceedings;

(3) Protecting the collateral securing the guaranteed loan and resisting any adverse changes that may be made to the collateral;

(4) Seeking a dismissal of the bankruptcy proceeding when the operation as proposed by the borrower to the bankruptcy court is not feasible;

(5) When permitted by the bankruptcy code, requesting a modification of any plan of reorganization if it appears additional recoveries are likely.

(6) Monitor confirmed plans under chapters 11, 12 and 13 of the bankruptcy code to determine borrower compliance. If the borrower fails to comply, the lender will seek a dismissal of the reorganization plan; and

(7) Keeping the Agency regularly informed in writing on all aspects of the proceedings.

(i) The lender will submit a default status report when the borrower defaults and every 60 days until the default is resolved or a final loss claim is paid.

(ii) The default status report will be used to inform the Agency of the bankruptcy filing, the reorganization plan confirmation date and effective date, when the reorganization plan is complete, and when the borrower is not in compliance with the reorganization plan.

(b) *Bankruptcy expenses.*

(1) Reorganization.

(i) Expenses, such as legal fees and the cost of appraisals incurred by the lender as a direct result of the borrower's chapter 11, 12, or 13 reorganization, are covered under the guarantee, provided they are reasonable, customary, and provide a demonstrated

economic benefit to the lender and the Agency.

(ii) Lender's in-house expenses, which are those expenses which would normally be incurred for administration of the loan, including in-house lawyers, are not covered by the guarantee.

(2) Liquidation expenses in bankruptcy.

(i) Reasonable and customary liquidation expenses may be deducted from the proceeds of the collateral in liquidation bankruptcy cases.

(ii) In-house expenses are not considered customary liquidation expenses, may not be deducted from collateral proceeds, and are not covered by the guarantee.

(c) *Estimated loss claims in reorganization.*

(1) At confirmation. The lender may submit an estimated loss claim upon confirmation of the reorganization plan in accordance with the following:

(i) The estimated loss payment will cover the guaranteed percentage of the principal and accrued interest written off, plus any allowable costs incurred as of the effective date of the plan.

(ii) The lender will submit supporting documentation for the loss claim, and any additional information requested by the Agency, including justification for the legal fees included on the claim.

(iii) The estimated loss payment may be revised as consistent with a court-approved reorganization plan.

(iv) Protective advances made and approved in accordance with § 762.149 may be included in an estimated loss claim associated with a reorganization, if:

(A) They were incurred in connection with the initiation of liquidation action prior to bankruptcy filing; or

(B) The advance is required to provide repairs, insurance, etc. to protect the collateral as a result of delays in the case, or failure of the borrower to maintain the security.

(2) Interest only losses. The lender may submit an estimated loss claim for interest only after confirmation of the reorganization plan in accordance with the following:

(i) The loss claims may cover interest losses sustained as a result of a court-ordered, permanent interest rate reduction.

(ii) The loss claims will be processed annually on the anniversary date of the effective date of the reorganization plan.

(iii) If the borrower performs under the terms of the reorganization plan, annual interest reduction loss claims will be submitted on or near the same date, beyond the period of the reorganization plan.

(3) Actual loss.

(i) Once the reorganization plan is complete, the lender will provide the Agency with documentation of the actual loss sustained.

(ii) If the actual loss sustained is greater than the prior estimated loss payment, the lender may submit a revised estimated loss claim to obtain payment of the additional amount owed by the Agency under the guarantee.

(iii) If the actual loss is less than the prior estimated loss, the lender will reimburse the Agency for the overpayment plus interest at the note rate from the date of the payment of the estimated loss.

(4) Payment to holder. In reorganization bankruptcy, if a holder makes demand upon the Agency, the Agency will pay the holder interest to the plan's effective date. Accruing interest thereafter will be based upon the provisions of the reorganization plan.

(d) *Liquidation under the bankruptcy code.*

(1) Upon receipt of notification that a borrower has filed for protection under Chapter 7 of the bankruptcy code, or a liquidation plan under chapter 11, the lender must proceed according to the liquidation procedures of this part.

(2) If the property is abandoned by the trustee, the lender will conduct the liquidation according to § 762.149.

(3) Proceeds received from partial sale of collateral during bankruptcy may be used by the lender to pay reasonable costs, such as freight, labor and sales commissions, associated with the partial sale. Reasonable use of proceeds for this purpose must be documented with the final loss claim in accordance with § 762.149(a)(vi).

§ 762.149 Liquidation.

(a) *Mediation.* When it has been determined that default cannot be cured through any of the servicing options available, or if the lender does not wish to utilize any of the authorities provided in this part, the lender must:

(1) Participate in mediation according to the rules and regulations of any State which has a mandatory farmer-creditor mediation program;

(2) Consider private mediation services in those States which do not have a mandatory farmer-creditor mediation program; and

(3) Not agree to any proposals to rewrite the terms of a guaranteed loan which do not comply with this part. Any agreements reached as a result of mediation involving defaults and or loan restructuring must have written concurrence from the Agency before they are implemented.

(b) *Liquidation plan.* If a default cannot be cured after considering servicing options and mediation, the lender will proceed with liquidation of the collateral in accordance with the following:

(1) Within 30 days of the decision to liquidate, standard eligible and CLP lenders will submit a written liquidation plan to the Agency which includes:

(i) Current balance sheets from all liable parties or, if the parties are not cooperative, the best information available, or in liquidation bankruptcies, a copy of the bankruptcy schedules or discharge notice;

(ii) A proposed method of maximizing the collection of debt which includes specific plans to collect any remaining loan balances on the guaranteed loan after loan collateral has been liquidated, including possibilities for judgment;

(A) If the borrower has converted loan security, the lender will determine whether litigation is cost effective. The lender must address, in the liquidation plan, whether civil or criminal action will be pursued. If the lender does not pursue the recovery, the reason must be documented when an estimated loss claim is submitted.

(B) Any proposal to release the borrower from liability will be addressed in the liquidation plan in accordance with § 762.146(c)(2);

(iii) An independent appraisal report on all collateral securing the loan that meets the requirements of § 762.127 and a calculation of the net recovery value of the security as defined in § 762.102. The appraisal requirement may be waived by the Agency in the following cases:

(A) The bankruptcy trustee is handling the liquidation and the lender has submitted the trustee's determination of value;

(B) The lender's proposed method of liquidation rarely results in receipt of less than market value for livestock and used equipment; or

(C) A purchase offer has already been received for more than the debt;

(iv) An estimate of time necessary to complete the liquidation;

(v) An estimated loss claim if the liquidation period is expected to exceed 90 days.

(vi) An estimate of reasonable liquidation expenses; and

(vii) An estimate of any protective advances.

(2) PLP lenders will submit a liquidation plan as required by their lender's agreement.

(c) *Agency approval of the liquidation plan.*

(1) CLP lender's or standard eligible lender's liquidation plan, and any

revisions of the plan, must be approved by the Agency.

(2) If, within 20 calendar days of the Agency's receipt of the liquidation plan, the Agency fails to approve it or fails to request that the lender make revisions, the lender may assume the plan is approved. The lender may then proceed to begin liquidation actions at its discretion as long as it has been at least 60 days since the borrower's eligibility for interest assistance was considered.

(3) At its option, the Agency may liquidate the guaranteed loan as follows:

(i) Upon Agency request, the lender will transfer to the Agency all rights and interests necessary to allow the Agency to liquidate the loan. The Agency will not pay the lender for any loss until after the collateral is liquidated and the final loss is determined; and

(ii) If the Agency conducts the liquidation, interest accrual will cease on the date the Agency notifies the lender in writing that it assumes responsibility for the liquidation.

(d) *Estimated loss claims.* An estimated loss claim will be submitted by the lender with the liquidation plan if the liquidation is expected to exceed 90 days. The estimated loss will be based on the following:

(1) The Agency will pay the lender the guaranteed percentage of the total outstanding debt, less the net recovery value of the remaining security, less any unaccounted for security; and

(2) The lender will discontinue interest accrual on the defaulted loan at the time the estimated loss claim is paid by the Agency. If the lender estimates that there will be no loss after considering the costs of liquidation, interest accrual will cease 90 days after the decision to liquidate or an estimated loss of zero will be submitted.

(e) *Protective advances.*

(1) Prior written authorization from the Agency is required for all protective advances in excess of $5,000 for CLP lenders and $3,000 for standard eligible lenders. The dollar amount of protective advances allowed for PLP lenders will be specified when PLP status is awarded by the Agency or as contained in the lender's agreement.

(2) The lender may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances as allowed in this part, plus interest that accrues on the protective advances.

(3) Payment for protective advances is made by the Agency when the final loss claim is approved, except in bankruptcy actions.

(4) Protective advances are used only when the borrower is in liquidation, liquidation is imminent, or when the lender has taken title to real property in a liquidation action.

(5) Legal fees are not a protective advance.

(6) Protective advances may only be made when the lender can demonstrate the advance is in the best interest of the lender and the Agency.

(7) Protective advances must constitute a debt of the borrower to the lender and be secured by the security instrument.

(8) Protective advances must not be made in lieu of additional loans.

(f) *Unapproved loans or advances.* The amount of any payments made by the borrower on unapproved loans or advances outside of the guarantee will be deducted from any loss claim submitted by the lender on the guaranteed loan, if that loan or advance was paid prior to, and to the detriment of, the guaranteed loan.

(g) *Acceleration.*

(1) If the borrower is not in bankruptcy, the lender shall send the borrower notice that the loan is in default and the entire debt has been determined due and payable immediately after other servicing options have been exhausted.

(2) The loan cannot be accelerated until after the borrower has been considered for interest assistance and the conclusion of mandatory mediation in accordance with § 762.149.

(3) The lender will submit a copy of the acceleration notice or other document to the Agency.

(h) *Foreclosure.*

(1) The lender is responsible for determining the necessary parties to any foreclosure action, or who should be named on a deed of conveyance taken in lieu of foreclosure.

(2) When the property is liquidated, the lender will apply the net proceeds to the guaranteed loan debt.

(3) When it is necessary to enter a bid at a foreclosure sale, the lender may bid the amount that it determines is reasonable to protect its and the Agency's interest. At a minimum, the lender will bid the lesser of the net recovery value or the unpaid guaranteed loan balance.

(i) *Final loss claims.*

(1) Lenders may submit a final loss claim when the security has been liquidated and all proceeds have been received and applied to the account.

(2) If a lender acquires title to property either through voluntary conveyance or foreclosure proceeding, the lender will submit a final loss claim after disposing of the property. The lender may pay reasonable maintenance expenses to protect the value of the property while it is owned by the lender. These may be paid as protective advances or deducted as liquidation expenses from the sales proceeds when the lender disposes of the property. The lender must obtain Agency written concurrence before incurring maintenance expenses which exceed the amounts allowed in § 762.149(e)(1).

(3) The lender will make its records available to the Agency for the Agency's audit of the propriety of any loss payment.

(4) All lenders will submit the following documents with a final loss claim:

(i) An accounting of the use of loan funds;

(ii) An accounting of the disposition of loan security and its proceeds;

(iii) A copy of the loan ledger indicating loan advances, interest rate changes, protective advances, and application of payments, rental proceeds, and security proceeds, including a running outstanding balance total; and

(iv) Documentation, as requested by the Agency, concerning the lender's compliance with the requirements of this part.

(5) The Agency will notify the lender of any discrepancies in the final loss claim or, approve or reject the claim within 40 days.

(6) The Agency will reduce a final loss claim based on its calculation of the dollar amount of loss caused by the lender's negligent servicing of the account. Loss claims may be reduced or rejected as a result of the following:

(i) A loss claim may be reduced by the amount caused by the lender's failure to secure property after a default, and will be reduced by the amount of interest that accrues when the lender fails to contact the borrower or takes no action to cure the default, once it occurs. Losses incurred as a result of interest accrual during excessive delays in collection, as determined by the Agency, will not be paid.

(ii) Unauthorized release of security proceeds, failure to verify ownership or possession of security to be purchased, or failure to inspect collateral as often required so as to ensure its maintenance.

(7) Losses will not be reduced for the following:

(i) Servicing deficiencies that did not contribute materially to the dollar amount of the loss.

(ii) Unaccounted security, as long as the lender's efforts to locate and recover the missing collateral was equal to that which would have been expended in the case of an unguaranteed loan in the lender's portfolio.

(8) Default interest, late charges, and loan servicing fees are not payable under the loss claim.

(9) The final loss will be the remaining outstanding balance after application of the estimated loss payment and the application of proceeds from the liquidation of the security.

(10) If the final loss is less than the estimated loss, the lender will reimburse the Agency for the overpayment, plus interest at the note rate from the date of the estimated loss payment.

(11) The lender will return the original guarantee marked paid after receipt of a final loss claim.

(j) *Future Recovery*. The lender will remit any recoveries made on the account after the Agency's payment of a final loss claim to the Agency in proportion to the percentage of guarantee, in accordance with the lender's agreement, until the account is paid in full or otherwise satisfied.

(k) *Overpayments*. The lender will repay any final loss overpayment determined by the Agency upon request.

(l) *Electronic funds transfer*. The lender will designate one or more financial institutions to which any Agency payments will be made via electronic funds transfer.

§ 762.150 Interest assistance program.

(a) *Requests for interest assistance*.

(1) To apply for interest assistance in conjunction with a new request for guarantee, the lender will submit the following:

(i) A completed cash flow projection and interest assistance needs analysis portion of the application form. Interest assistance can be applied to each loan, only to one loan or any distribution the lender selects; however, interest assistance is only available on as many loans as necessary to achieve a positive cash flow.

(ii) For loans with unequal payments, a proposed debt repayment schedule which shows principal and interest payments for the subject loan, in each year of the loan.

(2) To request interest assistance on an existing guaranteed loan, the lender must submit to the Agency the following:

(i) A completed cash flow projection and interest assistance needs analysis portion of the application form. Interest assistance can be applied to each loan, only to one loan or any distribution the lender selects as required to achieve a feasible plan.

(ii) For loans with unequal payments, a proposed debt repayment schedule which shows scheduled payments for the subject loan in each of the remaining years of the loan.

(iii) Cash flow budgets and supporting justification to document that the request meets the requirements outlined in paragraph (b) of this section. This will include a typical cash flow if the projected cash flow budget is atypical.

(3) Requests for interest assistance on lines of credit or loans made for annual operating purposes must be accompanied by a projected monthly cash flow budget.

(b) *Requirements*.

(1) The typical term of scheduled loan repayment will not be reduced solely for the purpose of maximizing eligibility for interest assistance. To be eligible for interest assistance, a loan must be scheduled over the maximum terms typically used by lenders for similar type loans within the limits set by § 762.124 of this part. At a minimum, loans will be scheduled for repayment over the terms listed below, but for OL not to exceed the life of the security:

(i) An OL for the purpose of providing annual operating and living expenses will be scheduled for repayment when the income is scheduled to be received from the sale of the crops, livestock, and livestock products which will serve as security for the loan.

(ii) OL for purposes other than annual operating and living expenses (i.e. equipment, livestock, refinancing of existing debt) will be scheduled over 7 years from the effective date of the proposed interest assistance agreement.

(iii) FO and SW secured by real estate will be scheduled for 20 years from the closing date of the original note covered by the guarantee.

(2) The lender must document that positive cash flow, as defined in § 762.102(b), is not possible without reducing the interest rate on the borrower's loan and with the debt restructured over the term of repayment cited above.

(3) The lender must determine whether the borrower, including members of an entity, owns any significant assets which do not contribute directly to essential family living or farm operations. The lender must determine the market value of these assets and prepare a cash flow budget based on the assumption that the value of these assets will be used for debt reduction. If a positive cash flow can then be achieved, the borrower is not eligible for interest assistance. All interest assistance calculations will be based on the cash-flow budget which assumes that the assets will be sold.

(4) A borrower's new guaranteed loan is eligible for interest assistance if all the following conditions are met:

(i) The applicant needs interest assistance in order to achieve a positive cash flow as defined in § 762.102(b).

(ii) If significant changes in the borrower's cash flow budget are anticipated after the initial 12 months, then the typical cash flow budget must demonstrate that the borrower will still have a feasible plan, as defined in § 762.102(b), following the anticipated changes, with or without interest assistance.

(iii) If a positive cash flow cannot be achieved, even with other creditors voluntarily adjusting their debts and with the interest assistance, the interest assistance request will not be approved.

(5) An existing guaranteed loan is eligible for interest assistance if the borrower needs interest assistance to achieve a feasible plan as defined in § 762.102(b), and the borrower meets the eligibility criteria of § 762.120, except the provision regarding prior debt forgiveness. If a feasible plan cannot be achieved, even with other creditors voluntarily adjusting their debts and with the interest assistance, the interest assistance request will not be approved. If a borrower has multiple loans, interest assistance may be provided on one or each loan, as available, to the extent necessary to achieve a feasible plan.

(6) The term of the interest assistance agreement under this section shall not exceed 10 years from the date of the first interest assistance agreement signed by the loan applicant, including entity members, or the outstanding term of the loan, as limited by this section, whichever is less.

(7) The lender may charge a fixed or variable interest rate. The type of rate must be the same as the type of rate in the underlying note or line of credit agreement. The lender will reduce the interest rate charged the borrower's account by at least the amount of interest assistance.

(8) The borrower must be an operator of not larger than a family size farm.

(c) *Interest assistance closing*.

(1) Initial guaranteed loans will be closed in accordance with § 762.130.

(2) The lender will then prepare and deliver to the Agency a closing report for each initial and existing guaranteed loan which has been granted interest assistance.

(3) When all requirements have been met, the lender and the Agency will execute an interest assistance agreement.

(d) *Interest assistance claims and payments*.

(1) The interest assistance claim will be prepared by the lender. The following conditions apply to the claims process:

(i) No claim period can exceed 12 months. The initial and final claim periods may be less than 12 months. In such claims, the 4 percent payment will be prorated over the number of months in the claim period. The period for all other claims must be 12 months.

(ii) To permit the borrower to prepare for the upcoming year, a claim should be filed within 60 days of each anniversary date. Claims not filed within 1 year of the anniversary date will not be paid and the amount due the lender is permanently forfeited.

(iii) If a claim is submitted without an interest assistance review in accordance with § 762.102, when it is required, the claim will not be processed until the review is submitted by the lender.

(iv) Upon full payment of the note or line of credit, the lender will immediately prepare the request for interest assistance payment and submit it to the Agency.

(v) Interest assistance payments shall cease upon the assumption and transfer of the loan if the transferee was not liable for the debt on the effective date of the interest assistance agreement. The lender shall request payment through the date of the transfer or assumption. The claim must be submitted within 1 year or it will be denied and the payment permanently forfeited.

(vi) All claims will be supported by detailed calculations of average daily principal balances during the claim period.

(vii) The Agency will review the claim and the supporting documentation. If the information and the supporting documentation is not complete and correct, the reviewing official will notify the lender in writing, of the actions needed to correct the request.

(viii) If there is a substitution of lender, a claim for the first lender's interest assistance, through the effective date of the substitution, will be submitted by the first lender and processed at the time of the substitution.

(ix) Interest assistance claims shall be submitted concurrently with the submission of estimated loss claims where interest accrual ceases, or final loss claims that are not preceded by an estimated loss claim.

(2) [Reserved]

(e) *Request for continuation of interest assistance.*

(1) For all interest assistance agreements exceeding 12 months, the lender will perform an analysis of the applicant's farming operation and need for continued interest assistance. The following information will be submitted to the Agency:

(i) A summary of the operation's actual financial performance in the previous year, including a detailed income and expense statement.

(ii) A narrative description of the causes of any major differences between the previous year's projections and actual performance.

(iii) A current balance sheet.

(iv) A cash flow budget for the period being planned. A monthly cash flow budget is required for all lines of credit and operating loans made for annual operating purposes. All other loans may include either an annual or monthly cash flow budget.

(v) A copy of the interest assistance needs analysis portion of the application form which has been completed based on the planned period's cash flow budget.

(2) The loan will be eligible for continuation of interest assistance if a feasible plan, including interest assistance, can be projected for the plan period. If the evaluation indicates that the borrower needs a level of interest assistance greater than 4 percent to project a feasible plan, then the Agency will deny the continuation of interest assistance. interest assistance will be reduced to zero during that review period. See § 762.102(b) for the definition of feasible plan.

(3) The documentation listed above will be provided to the Agency concurrently with the lender's submission of its request for interest assistance payment. This information will be provided to the Agency within 60 days after the review date specified on the interest assistance agreement.

(4) A request for continuation of interest assistance will be completed for 12 month periods, effective on the anniversary date.

(5) The initial review may be submitted in conjunction with any claim within the initial 12 month period. The anniversary date and length of the review period will be stated on the interest assistance agreement. Any request for interest assistance adjustment submitted effective any time other than the review date will be denied, except for those cases where it is necessary to service the loan with rescheduling, reamortization, deferral or writedown.

(6) If the review is not completed and submitted to the Agency within 1 year of the review date, no claim will be paid for that period.

(f) *Notification of Adverse Action.* The lender will be notified in writing of all Agency decisions in which a request for interest assistance, a request for continuation of interest assistance or lender's claim for interest assistance are denied. The notification letter will provide specific reasons for the decision and appeals will be handled in accordance with parts 11 and 780 of this title.

(g) *Servicing of loans covered by an interest assistance agreement.*

(1) Loans covered by interest assistance agreements cannot be consolidated.

(2) The loan will be transferred with the interest assistance agreement only in cases where the transferee was liable for the debt at the time interest assistance was granted. Under no other circumstances will the interest assistance be transferred. If interest assistance is necessary for the transferee to achieve a positive cash flow, the lender may request such assistance, which may be approved if interest assistance funds are available and the applicant is eligible. The maximum length of the agreement will be 10 years from the date of the first agreement covering a loan for which the transferee was liable. If interest assistance is necessary for a positive cash flow and funds are not available, the request for assumption of the Agency guaranteed debt will be denied.

(3) When consideration is given to using a debt writedown to service a delinquent account, the subsidy level will be recalculated prior to any writedown. If a feasible plan can be obtained using interest assistance and funds are available, then the interest assistance will be authorized and no writedown will be approved. If a feasible plan cannot be achieved using 4 percent interest assistance, all further calculations for determining debt writedown eligibility and amounts to be written down will be based on the borrower receiving no interest assistance. If debt writedown is approved, the interest assistance claim for the previous review period will be processed in conjunction with the writedown loss claim. The interest assistance agreement will not be canceled and the anniversary date can remain the same or be re-established under the same guidelines that it was originally established. If the lender determines through its annual analysis that interest assistance is necessary for a feasible plan, a request to reinstate the subsidy in a subsequent review period may be submitted in accordance with paragraph (e) of this section.

(4) In the event of rescheduling or deferral of loans with interest assistance, interest assistance will remain available for that loan under the terms of the existing interest assistance agreement. Additional years of interest assistance and/or increases in the

restructured loan amount will require additional funding. If the additional interest assistance is needed in order to produce a feasible plan throughout the life of the rescheduled loan and funds are not available for the additional interest assistance, then the rescheduling will not be approved by the Agency. In no case will the subsidy be extended more than 10 years from the effective date of the first interest assistance agreement signed by the loan applicant or by anyone who signed the note or line of credit agreement. Rescheduling or deferral will only be processed in conjunction with a claim, effective on the claim date or anniversary date. A review will be completed, in accordance with paragraph (e)(1) of this section. The anniversary date can remain the same or be re-established under the same guidelines that it was originally established.

(5) In cases where the interest on a loan covered by an interest assistance agreement is reduced by court order in a reorganization plan under the bankruptcy code, interest assistance agreement will be terminated effective on the date of the court ordered interest reduction. The lender will file a claim due through the effective date of the court ordered interest reduction. Guaranteed loans which have had their interest reduced by bankruptcy court order are not eligible to receive interest assistance.

(6) For Loan Guarantees held by holders, Agency purchase of the guaranteed portion of a loan will stop interest assistance payments on that portion. Interest assistance payments will cease upon termination of the Loan Guarantee, upon reaching the expiration date contained in the agreement or upon cancellation by the Agency.

(7) When a borrower defaults on a loan, interest assistance may be considered in conjunction with a rescheduling action in accordance with § 762.145(b). After the meeting required by § 762.143(b)(3) and consideration of actions to correct the delinquency, the lender will notify the Agency of the results of the meeting. If the restructuring proposal includes interest assistance, the lender will provide the items required by paragraph (d) of this section in addition to those items required by § 762.145. Liquidation must not be initiated, except in accordance with § 762.145(b)(3)(v).

(h) *Cancellation of interest assistance agreement.* The interest assistance agreement is incontestable except for fraud or misrepresentation, of which the lender and borrower have actual knowledge at the time that the interest assistance agreement is executed, or which the lender or borrower participates in or condones.

(i) *Adjustment of assistance level between review dates.* After the initial or renewal request for interest assistance is processed, no adjustments can be made until the next review or adjustment date except when necessary to service the loan with a rescheduling or deferral.

(j) *Excessive interest assistance.* Upon written notice to the lender, borrower and any holder, the Agency may amend or cancel the interest assistance agreement and collect from the lender any amount of interest Assistance granted which resulted from incomplete or inaccurate information, an error in computation, or any other reason which resulted in payment that the lender was not entitled to receive.

(k) The Deputy Administrator for Farm Loan Programs has the authority to grant an exception to any requirement involving interest Assistance if it is in the best interest of the Government.

§§ 762.151–762.159 [Reserved].

§ 762.160 Sale, assignment and participation.

(a) The following general requirements apply to selling, assigning or participating guaranteed loans.

(1) Subject to Agency concurrence, the lender may sell, assign or participate all or part of the guaranteed portion of the loan to one or more holders at or after loan closing, only if the loan is not in default. However, a line of credit can be participated, but not sold or assigned.

(2) The Agency may refuse to execute the Assignment of Guarantee and prohibit the sale in case of the following:

(i) The Agency purchased and is holder of a loan that was sold by the lender that is requesting the assignment.

(ii) The lender has not complied with the reimbursement requirements of § 762.146(c)(7), except when the 180 day reimbursement or liquidation requirement has been waived by the Agency.

(3) The lender will provide the Agency with copies of all appropriate forms used in the sale or assignment.

(4) The guaranteed portion of the loan may not be sold or assigned by the lender until the loan has been fully disbursed to the borrower, except a line of credit may be participated prior to being fully advanced.

(5) The lender is not permitted to sell, assign or participate any amount of the guaranteed or unguaranteed portion of loan to the loan applicant or borrower, or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary, or affiliate.

(6) Upon the lender's sale or assignment of the guaranteed portion of the loan, or participation of the line of credit, the lender will remain bound to all obligations indicated in the Guarantee, lender's agreement, the Agency program regulations, and to future program regulations not inconsistent with the provisions of the Lenders agreement. The lender retains all rights under the security instruments for the protection of the lender and the United States.

(b) The following will occur upon the lender's sale or assignment of the guaranteed portion of the loan:

(1) The holder will succeed to all rights of the Guarantee pertaining to the portion of the loan purchased.

(2) The lender will send the holder the borrower's executed note attached to the Guarantee.

(3) The holder, upon written notice to the lender and the Agency, may assign the unpaid guaranteed portion of the loan. The holder must sell the guaranteed portion back to the original lender if requested for servicing or liquidation of the account.

(4) The guarantee or assignment of guarantee in the holder's possession does not cover:

(i) Interest accruing 90 days after the holder has demanded repurchase by the lender, except as provided in the assignment of guarantee and § 762.144(c)(3)(iii).

(ii) Interest accruing 90 days after the lender or the Agency has requested the holder to surrender evidence of debt repurchase, if the holder has not previously demanded repurchase.

(c) In a participation, the lender sells an interest in a loan but retains the note, the collateral securing the note, and all responsibility for loan servicing and liquidation. The guarantee does not encompass the participant.

(1) The lender must retain at least 10 percent of the total guaranteed loan amount from the unguaranteed portion of the loan in its portfolio, except when the loan guarantee exceeds 90 percent, the lender must retain the total unguaranteed portion.

(2) Participation with a lender by any entity does not make that entity a holder or a lender as defined in this part.

(d) Negotiations concerning premiums, fees, and additional payments for loans are to take place between the holder and the lender. The Agency will participate in such negotiations only as a provider of information.

7 CFR Chapter XVIII

PART 1980—GENERAL

2. The authority citation for part 1980 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—General

3. Revise § 1980.1 to read as follows:

§ 1980.1 Purpose.

This subpart contains the general regulations and prescribed forms which are applicable to Community Programs Guaranteed Loans under subpart I of this part.

4. Amend § 1980.6 as follows:

a. Remove in paragraph (a) the definitions of ''Conditional Commitment (Farmer Programs) (Form FmHA or its successor agency under Pub.L.103–354 1980–15),'' ''Contract of Guarantee (Line of Credit)(Form FmHA or its successor agency under Pub.L. 103–354 1980–27),'' ''Guaranteed line of credit,'' and ''Line of credit agreement'';

b. Remove in paragraph (a), in the definition of ''Guaranteed loan,'' the phrase ''or Form FmHA 1980–38,'';

c. Remove in paragraph (b), the abbreviations ''ASCS,'' ''CLP,'' ''EM,'' ''FO,'' ''OL,'' ''OL–Y,'' ''RL,'' and ''SW''; and

d. In paragraph (a), remove the definition of ''Lender's Agreement (Forms FmHA or its successor agency under Pub.L. 103–354 449–35 or 1980–38)'' and add a new definition to read as follows:

§ 1980.6 Definitions and abbreviations.

(a) * * *

Lender's Agreement (Form RD 449–35). The signed agreement between Rural Development and the lender setting forth the lender's loan responsibilities when the Loan Note Guarantee is issued.

* * * * *

§ 1980.11 [Amended]

5. Amend § 1980.11 as follows:

a. In the first sentence, remove the phrase ''and Contract of Guarantee'' and revise the word ''constitute'' to read ''constitutes'';

b. In the second sentence, remove the phrase '', Contract of Guarantee'';

c. In the fifth sentence, remove the phrase ''or Contract of Guarantee''; and

d. Remove the third and sixth sentences.

6. Amend § 1980.13 as follows:

a. In the introductory text to paragraph (b), remove the fourth sentence; and

b. Revise the introductory text of paragraph (b)(4) to read as follows:

§ 1980.13 Eligible lenders.

* * * * *

(b) * * *

(4) *Conflict of interest.* The Agency shall determine whether such ownership or business dealings are sufficient to result in a conflict of interest or an apparent conflict of interest. All lenders will, for each proposed loan, inform the Agency in writing and furnish such additional evidence as the Agency requests as to whether and the extent for those loans covered by Form RD 449–35, the lender or its principals or officers (including immediate family) or the borrower or its principals or officers (including immediate family) hold any stock or other evidence of ownership in the other.

* * * * *

7. Revise the last sentence of the introductory text of § 1980.20(a) to read as follows:

§ 1980.20 Loan guarantee limits.

(a) * * * Also, the maximum loss covered by Form RD 449–34 (available in any Agency office) can never exceed the lesser of:

* * * * *

8. Revise § 1980.21 to read as follows:

§ 1980.21 Guarantee fee.

The fee will be the applicable rate multiplied by the principal loan amount multiplied by the percent of guarantee, paid one time only at the time the Loan Note Guarantee is issued.

(a) The fee will be paid to the Agency by the lender and is nonreturnable. The lender may pass on the fee to the borrower.

(b) Guarantee fee rates are specified in exhibit K of RD Instruction 440.1 (available in any Rural Development Office).

9. Amend § 1980.22 as follows:

a. In the introductory text of paragraph (b) and in paragraph (b)(3), remove the phrase ''or Contract of Guarantee''; and

b. Revise paragraph (a) to read as follows:

§ 1980.22 Charges and fees by lender.

(a) *Routine charges and fees.* The lender may establish the charges and fees for the loan, provided they are the same as those charged other applicants for similar types of transactions. ''Similar types of transactions'' means those transactions involving the same type of loan requested for which a non-guaranteed loan applicant would be assessed charges and fees.

* * * * *

§ 1980.46 [Removed and reserved]

10. § 1980.46 is removed and reserved.

§ 1980.60 [Amended]

11. Amend § 1980.60 as follows:

a. In the heading, remove the phrase ''or Contract of Guarantee'';

b. In the introductory text of paragraph (a), in the second sentence, remove the phrase ''For all other loans, Form FmHA or its successor agency under Public Law 103–354'' to read and in its place add ''Form'',

c. In paragraph (a)(1), remove the phrases ''or line of credit'' and ''or Conditional Commitment for Contract of Guarantee'' and revise the phrase ''FmHA or its successor agency under Public Law 103–354'' to read ''the Agency'';

d. In paragraphs (a)(6) and (a)(7), remove the phrases ''or line of credit'';

e. In paragraph (a)(9), remove the phrase ''joint operation, (for Farmer Program loans only),'';

f. In paragraphs (a)(10) and (a)(11), remove the phrases ''or Conditional Commitment for Contract of Guarantee'';

g. In paragraph (a)(12), remove the second sentence;

h. In paragraph (b), remove the phrase ''or Contract of Guarantee''; and

i. In paragraph (c), remove the phrase ''or Form FmHA or its successor agency under Public Law 103–354 1980–38'' at the end.

§ 1980.61 [Amended]

12. Amend § 1980.61 as follows:

a. In the heading, remove the phrase ''Contract of Guarantee'';

b. In the first sentence of paragraph (a)(1), remove the phrase ''Except for Farmer Programs loans, the'' and add in its place ''The'';

c. Remove paragraph (a)(2) and redesignate paragraph (a)(3) as paragraph (a)(2);

d. In newly redesignated paragraph (a)(2), remove the phrase ''or Contract of Guarantee;''

e. In paragraph (b)(1) remove the phrase ''or Form FmHA or its successor agency under Public Law 103–354 1980–38'';

f. In paragraphs (b)(3) and (4), remove the phrases ''or § 1980.119 of subpart B of this part,'';

g. Remove paragraph (c) and redesignate paragraphs (d) through (h) as paragraphs (c) through (g), respectively;

h. In newly redesignated paragraph (c), remove the last sentence;

i. In newly redesignated paragraph (d), remove the phrase ''or Contract of Guarantee'' from the first sentence;

j. In newly redesignated paragraph (f), remove the phrase ''or Contract of Guarantee''

k. In newly redesignated paragraph (g), remove the phrases ''or Form FmHA or its successor agency under Public Law 103–354 1980–38'' and ''the Contract of Guarantee,'' from the last sentence.

§ 1980.62 [Amended]

13. Amend § 1980.62 as follows:

a. In the first and third sentences, remove the phrase ''or § 1980.119 of subpart B of this part''; and

b. Remove the last sentence.

§ 1980.63 [Amended]

14. Amend § 1980.63(a) to remove the phrase ''or I.D.6. of Form FmHA or its successor agency under Public Law 103–354 1980–38''.

§ 1980.64 [Amended]

15. Amend § 1980.64 as follows:

a. In paragraph (a), remove the phrase ''or paragraph I.D.6. of Form FmHA or its successor agency under Public Law 103–354 1980–38''; and

b. In paragraph (b), remove the phrase ''or line of credit'' wherever it occurs in the first sentence.

§ 1980.65 [Amended]

16. Amend § 1980.65 to remove the phrase '', or for Farmer Programs Loans, § 1980.136 of subpart B of this part''.

§ 1980.66 [Amended]

17. Amend § 1980.66 to remove the phrase '', or paragraph I.D.6.(b) of Form FmHA or its successor agency under Public Law 103–354 1980–38''.

§ 1980.67 [Amended]

18. Amend § 1980.67 as follows:

a. In paragraph (a), remove the first sentence; and

b. In paragraph (b), remove the phrase ''or line of credit''.

§ 1980.68 [Amended]

19. Amend § 1980.68 as follows:

a. In the heading, remove the phrase ''or Contract of Guarantee'';

b. In the first sentence, remove the phrase ''or Contract(s) of Guarantee'';

c. In the second sentence in the parentheticals, remove the phrase '', or paragraph 6 of Form FmHA or its successor agency under Public Law 103–354 1980–27'';

d. In the third sentence, remove the phrases ''or line(s) of credit,'' ''or Contract(s) of Guarantee,'' and ''or Form FmHA or its successor agency under Public Law 103–354 1980–27''; and

e. Remove the last two sentences.

§ 1980.83 [Amended]

20. Amend § 1980.83 (a) to remove the second sentence.

§ 1980.84 [Amended]

21. Amend § 1980.84 as follows:

a. In the heading, remove the phrase ''or line of credit'';

b. Remove the phrases ''Contract of Guarantee'' and ''or Contract of Guarantee'' from the first sentence of paragraph (b)(1)(iv);

b. Remove the phrase ''Contract of Guarantee'' from paragraph (b)(1)(v); and

c. Remove the phrase ''or § 1980.119 of subpart B of this part'' from the first and fourth sentences in paragraph (b)(4).

Appendices D–L to Subpart A [Removed]

22. Amend part 1980, subpart A by removing Appendices D through L.

Subpart B [Removed and reserved]

23. Subpart B (§§ 1980.101–1980.200 and Exhibits A through G) is removed and reserved.

Signed in Washington, D.C., on January 19, 1999.

James W. Schroeder,

Acting Under Secretary for Farm and Foreign Agricultural Services.

Jill Long-Thompson,

Under Secretary for Rural Development.

[FR Doc. 99–3256 Filed 2–8–99; 4:57 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Notice of Eligibility Criteria for Certified and Preferred Lenders

AGENCY: Farm Service Agency, USDA.

ACTION: Notice of Eligibility Criteria.

SUMMARY: This notice sets forth the volume requirements and loss rates necessary for lenders to be eligible for the Farm Service Agency's Certified Lender Program (CLP) and the Preferred Lender Program (PLP).

EFFECTIVE DATE: February 12, 1999.

FOR FURTHER INFORMATION CONTACT: Steven Ford, Sr. Loan Officer, Farm Service Agency, Farm Loan Programs, Loan Making Division, Stop 0522, 1400 Independence Avenue, SW, Washington, DC 20250–0522, telephone (202) 720–1632; email Steve.Ford@usda.gov.

SUPPLEMENTARY INFORMATION:

Programs Affected

10.406 Farm Operating Loans
10.407 Farm Ownership Loans

Background

The Farm Service Agency (FSA) is modifying its CLP and also establishing a PLP through a Final Rule published elsewhere in this issue of the **Federal Register**. The CLP and PLP are programs which provide qualifying lenders additional authorities and streamlined procedures under the Agency's guaranteed farm loan program.

To qualify for CLP or PLP status, lenders must meet certain eligibility criteria. Eligibility criteria can be found in 7 CFR 762.106 (b) and (c). Included in the eligibility criteria is the requirement for lenders to have made a certain number of Agency guaranteed farm loans and for the lender's loss rate to be less than a maximum.

With this notice, the Agency is setting the requirements as follows:

(a) 7 CFR 762.106(b)(5) requires CLP lenders to have closed a minimum number of loans. This is set at a minimum of 10 Agency guaranteed farm loans ever and five of such loans in the past two years.

(b) 7 CFR 762.106(b)(2) requires that CLP lenders not exceed a maximum loss rate. This rate is set at 7.00 percent.

(c) 7 CFR 762.106(c)(3) requires PLP lenders to have closed a minimum number of loans. This is set at a minimum of 30 Agency guaranteed farm loans in the past three years.

(d) 7 CFR 762.106(c)(4) requires PLP lenders not exceed a maximum loss rate. This rate is set at 3.00 percent.

The Agency may periodically change these eligibility criteria through a **Federal Register** notice.

Dated: January 15, 1999.

Carolyn B. Cooksie,

Acting Administrator, Farm Service Agency.

[FR Doc. 99–3257 Filed 2–8–99; 4:57 pm]

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federal register

Friday
February 12, 1999

Part VI

Department of Housing and Urban Development

Delegation of Authority to the Assistant Secretary and the Deputy Assistant Secretary for Housing-Federal Housing Commissioner; Notice

Redelegation of Authorities to the Assistant Secretary for Fair Housing and Equal Opportunity; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4461–D–01]

Delegation of Authority Under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 to the Assistant Secretary for Housing-Federal Housing Commissioner and the Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: This notice delegates to the Assistant Secretary for Housing-Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner certain of the Secretary's powers and authorities under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

EFFECTIVE DATE: February 5, 1999.

FOR FURTHER INFORMATION CONTACT: Janet A. Tasker, Acting Director, Government Sponsored Enterprise Staff, Room 6154, telephone (202) 708–2224; or for legal questions, contact Kenneth Markison, Assistant General Counsel for GSE/RESPA, Room 9262, telephone (202) 708–3137 (these are not toll-free numbers). The address for both persons is Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. For hearing- and speech-impaired persons, the telephone numbers may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA) (12 USC 4501 *et seq.*), the Secretary of Housing and Urban Development has general and specific regulatory authorities respecting the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Government-Sponsored Enterprises or GSEs). FHEFSSA's purpose is to establish a regulatory framework for the GSEs that reflects their unique status as government-sponsored enterprises that receive substantial public benefits. FHEFSSA substantially overhauled the regulatory authorities and structure for GSE regulation.

Under FHEFSSA, the Secretary is responsible for establishing housing goals for the GSEs' purchases of mortgages financing: housing for low- and moderate-income families; housing located in central cities, rural areas, and other underserved areas; and special affordable housing to meet the unaddressed needs of low-income families in low-income areas and very low-income families. In addition, FHEFSSA mandates that the Secretary: prohibit the GSEs from discriminating in their mortgage purchases; require the GSEs to submit data to assist investigations of mortgage lenders under the Fair Housing Act and the Equal Credit Opportunity Act (ECOA); obtain information on Fair Housing Act and ECOA violations and provide such information to the GSEs; direct the GSEs to take remedial actions against lenders with discriminatory lending practices; and periodically review and comment on the GSEs' underwriting and appraisal guidelines to ensure that the guidelines are consistent with FHEFSSA and the Fair Housing Act. FHEFSSA also sets forth requirements for the Secretary's review and approval of the GSEs' new programs, for GSE submission of mortgage purchase data and reports to the Secretary, for the Secretary's dissemination of data and protection of proprietary information, and for enforcement and other proceedings. The Secretary implemented these responsibilities in a regulation codified at 24 CFR part 81.

This notice delegates certain specified powers and authorities of the Secretary under FHEFSSA to the Assistant Secretary for Housing-Federal Housing Commissioner. No previous delegation of this authority has been published in the **Federal Register**. The authority delegated under this notice does not, however, include the Secretary's general regulatory power (except to the extent that it authorizes the issuance of regulations), authority provided to Administrative Law Judges in 24 CFR part 81, or the authority to: determine whether data is proprietary; issue orders providing that data is proprietary; submit annual reports to Congress; or make certain income adjustments or determinations. The authority delegated under this notice includes the authority to issue rules and regulations under FHEFSSA, waive such regulations, and take other appropriate actions, as specified, to implement FHEFSSA. When taking actions involving the Office of Federal Housing Enterprise Oversight (OFHEO), the delegatees shall consult with the Secretary.

Accordingly, the Secretary hereby delegates the following:

Section A. Authority

1. With the exception of the income adjustments and determinations under 12 U.S.C. 4502(8)(B), (9), (10)(B), and (19)(B), and the authority and power provided to Administrative Law Judges under 24 CFR 81.82(b)(2) and (b)(3), 81.83(d)(3)–(4), and 81.84, the Secretary delegates to the Assistant Secretary for Housing-Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner all the power and authority with respect to housing goal activities in 12 U.S.C. 4502 and 4561–88 including, but not limited to: monitoring the GSEs' performance under the housing goals and enforcing compliance with the goals, including determining whether a GSE has failed, or is likely to fail, to meet a housing goal; providing written notices to the GSEs of failure or substantial probability of failure to meet a goal; extending response periods for the GSEs; requiring a housing plan; providing required notices to Congress under the housing goal provisions; reviewing housing plans; approving and disapproving housing plans; monitoring compliance with housing plans; issuing cease-and-desist orders and imposing civil money penalties; requesting the Attorney General to bring actions; settling and depositing civil money penalties; and making orders and agreements publicly available.

2. With the exception of the authority and power provided to Administrative Law Judges under 24 CFR 81.46(e)(1), the Secretary delegates to the Assistant Secretary for Housing-Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner all the power and authority under the Fair Housing provisions of FHEFSSA at 12 U.S.C. 4545 and under regulations at 24 CFR part 81, subpart C, including, but not limited to: prohibiting each GSE from discriminating in any manner in the purchase of any mortgage because of race, color, religion, sex, handicap, familial status, age, or national origin, including any consideration of the age or location of the dwelling or the age of the neighborhood or census tract where the dwelling is located in a manner that has a discriminatory effect; requiring each GSE to submit data to assist in investigating whether a mortgage lender with which a GSE does business has failed to comply with the Fair Housing Act; requiring each GSE to submit data to assist in investigating whether a mortgage lender with which a GSE does business has failed to comply with the Equal Credit Opportunity Act (ECOA) and to submit information to ECOA enforcement agencies; obtaining information on Fair Housing Act and

ECOA violations and providing that to the GSEs; directing the GSEs to take remedial actions against lenders with discriminatory lending practices; reviewing and commenting on the GSEs' underwriting and appraisal guidelines to ensure that such guidelines are consistent with the Fair Housing Act and FHEFSSA; and requesting the Director of the Office of Federal Housing Enterprise Oversight to bring actions under 12 U.S.C. 4631 and 12 U.S.C. 4636 to enforce violations of 12 U.S.C. 4545.

3. With the exception of the authority and power provided to Administrative Law Judges under 24 CFR 81.82(b)(2) and (b)(3), 81.83(d)(3)–(4), and 81.84, the Secretary delegates to the Assistant Secretary for Housing-Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner all the power and authority with respect to prior approval of new programs under 12 U.S.C. 4542 including, but not limited to: requiring that GSEs submit information about a program and requiring that GSEs submit new program requests under 24 CFR 81.52; approving and disapproving new program requests; extending the period for new program review.

4. With the exception of the authority and power provided to Administrative Law Judges under 24 CFR 81.82(b)(2) and (b)(3), 81.83(d)(3)–(4), and 81.84, the Secretary delegates to the Assistant Secretary for Housing-Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner all the power and authority with respect to reporting activities in 12 U.S.C. 1456(e)–(f), 1723a(m)–(n), and 4547, and under 24 CFR 81.102, including but not limited to: determining the form of data submitted; requiring the submission of additional data characteristics; requiring additional reports and other information concerning GSE activities; requiring the GSEs to provide data underlying any of the reports required under 24 CFR part 81 and to conduct additional analyses concerning any report required under 24 CFR part 81; and to independently verify the accuracy and completeness of data, information, and reports provided by each GSE, including conducting on-site verification when such steps are reasonably related to: determining whether a GSE is complying with 12 U.S.C. 4541–4589 and the GSEs' Charter Acts; establishing standards and procedures for and imposing civil money penalties; requesting the Attorney General to bring actions; settling and depositing civil money penalties; making orders and agreements publicly available;); and requesting the Director of the Office of Federal Housing Enterprise Oversight to bring actions under 12 U.S.C. 4631 and 12 U.S.C. 4636 to enforce violations of 12 U.S.C. 1456(e)–(f), 1723a(m)–(n), and 4547, and 24 CFR 81.102.

5. The Secretary delegates to the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner all the power and authority with respect to access to information activities in 12 U.S.C. 4525, 4543, and 4546 including, but not limited to: recommending the invocation of 5 U.S.C. 552(b)(4), (6), and (8); and not providing public access to proprietary data.

6. The Secretary delegates to the Assistant Secretary for Housing'Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner all the power and authority with respect to book-entry procedure activities in 24 CFR part 81, subpart H, including, but not limited to establishing certain procedures for Federal Reserve Banks and waiving book-entry regulations.

7. The Secretary delegates to the Assistant Secretary for Housing-Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner all the power and authority with respect to the Office of Federal Housing Enterprise Oversight (OFHEO) activities in 12 U.S.C. 4513(c), 4516(g)(1)–(2), and 4548(b) including, but not limited to: reviewing and approving certain actions of the OFHEO Director; and receiving and commenting to Congress on OFHEO's financial plans, forecasts, and operations reports. When taking action relating to OFHEO under this paragraph, the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner shall consult with the Secretary.

8. The Secretary delegates to the Assistant Secretary for Housing-Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner all the power and authority with respect to issuing regulations under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) and waiving regulations promulgated under such Act.

9. The Secretary delegates to the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner the power and authority to take any appropriate action to implement the power and authority delegated under this delegation.

Section B. Authority to Redelegate

The Assistant Secretary for Housing-Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner may redelegate to employees of the Department any of the power and authority delegated under this delegation.

Authority: Secs. 1302 and 1331–48 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, 12 U.S.C. 4502 and 4561–88; section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 5, 1999.

Andrew Cuomo,

Secretary.

[FR Doc. 99–3465 Filed 2–11–99; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4461–D–02]

Redelegation of Fair Housing And Other Authorities Respecting the Government Sponsored Enterprises Under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 to the Assistant Secretary for Fair Housing and Equal Opportunity

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: This notice redelegates from the Assistant Secretary for Housing-Federal Housing Commissioner to the Assistant Secretary for Fair Housing and Equal Opportunity the Fair Housing authority, and other authorities necessary to carry out the Fair Housing authority, under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

EFFECTIVE DATE: February 5, 1999.

FOR FURTHER INFORMATION CONTACT: Bryan Greene, Acting Director of Policy and Program Evaluation, Office of Fair Housing and Equal Opportunity, Room 5246, telephone (202) 708–1145; or for legal questions, contact Kenneth Markison, Assistant General Counsel for GSE/RESPA, room 9262, telephone (202) 708–3137 (these are not toll-free numbers). The address for both persons is Department of Housing and Urban Development, 451 Seventh Street, S.W.,

Washington, D.C. 20410. For hearing- and speech-impaired persons, the telephone numbers may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA) (12 U.S.C. 4501 *et seq.*), the Secretary of Housing and Urban Development has general and specific regulatory authorities respecting the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Government-Sponsored Enterprises or GSEs) which have been delegated to the Assistant Secretary for Housing-Federal Housing Commissioner, the notice of which is published elsewhere in today's **Federal Register**.

The Fair Housing provisions of FHEFSSA (12 U.S.C. 4545) mandate that the Secretary: prohibit the GSEs from discriminating in their mortgage purchases; require the GSEs to submit data to assist in investigations of mortgage lenders under the Fair Housing Act and the Equal Credit Opportunity Act (ECOA); obtain information on Fair Housing Act and ECOA violations and provide such information to the GSEs; direct the GSEs to take remedial actions against lenders with discriminatory lending practices; and periodically review and comment on the GSEs' underwriting and appraisal guidelines to ensure that the guidelines are consistent with FHEFSSA and the Fair Housing Act. Under HUD's GSE regulations (24 CFR 81.47), as appropriate, the Secretary is required to refer violations of 12 U.S.C. 4545 to the Director of the Office of Federal Housing Enterprise Oversight (OFHEO) to initiate enforcement actions for GSE violations or potential violations of its provisions pursuant to 12 U.S.C. 4513 and 4631 of FHEFSSA.

FHEFSSA establishes the Secretary's authority to require reports on GSE activities as the Secretary deems appropriate (12 U.S.C, 4547). This includes the authority under 24 CFR 81.65 to require that a GSE furnish the data underlying any reports and conduct additional analyses concerning any such report. Under 24 CFR 81.102, the Secretary is also authorized to independently verify the accuracy and completeness of the data, information, and reports provided by each GSE, including conducting on-site verification, when such steps are reasonably related to determining whether a GSE is complying with 12 U.S.C. 4541–4589 of FHEFSSA and the GSEs' Charter Acts. FHEFFSA provides at 12 U.S.C. 4546 that the Secretary may by regulation or order provide that certain information shall be treated as proprietary information and not subject to public disclosure under 12 U.S.C. 4543.

The Assistant Secretary for Fair Housing and Equal Opportunity is delegated the Secretary's authority under the Fair Housing Act (42 U.S.C. 3601 *et seq.*), which includes authority over the GSEs under that Act. This redelegation of Fair Housing authority under FHEFSSA complements those authorities of the Assistant Secretary for Fair Housing and Equal Opportunity.

In carrying out the Fair Housing authority under FHEFSSA, the Assistant Secretary for Fair Housing and Equal Opportunity will receive confidential and proprietary information of the GSEs. The Assistant Secretary for Fair Housing and Equal Opportunity will establish all necessary safeguards to protect such information, including establishment of appropriate organizational walls and confidentiality agreements.

The Assistant Secretary for Housing-Federal Housing Commissioner is, therefore, redelegating to the Assistant Secretary for Fair Housing and Equal Opportunity all of the Fair Housing authority under FHEFSSA. To carry out this authority, the Assistant Secretary for Housing-Federal Housing Commissioner is also redelegating the authority to refer violations of FHEFSSA to OFHEO for enforcement in accordance with 24 CFR 81.47; to require necessary reports, underlying data, and analyses; and to verify the accuracy and completeness of the data, information, and reports provided by the GSEs, including conducting on-site verification.

The authority under FHEFSSA that is redelegated under this notice does not include the Secretary's general regulatory power, authority provided to Administrative Law Judges in 24 CFR part 81, or the authority to: issue rules and regulations; waive regulations; determine whether data is proprietary; issue orders providing that data is proprietary; submit annual reports to Congress; make certain income adjustments or determinations; issue cease-and-desist orders and impose civil money penalties; request the Attorney General to bring actions; settle and deposit civil money penalties; or make orders and agreements publicly available.

Accordingly, the Assistant Secretary for Housing-Federal Housing Commissioner hereby redelegates to the Assistant Secretary for Fair Housing and Equal Opportunity the following:

Section A. Authorities Redelegated

1. All power and authority under the Fair Housing provisions of FHEFSSA at 12 U.S.C. 4545 and under regulations at 24 CFR part 81, subpart C, including, but not limited to: prohibiting each GSE from discriminating in any manner in the purchase of any mortgage because of race, color, religion, sex, handicap, familial status, age, or national origin, including any consideration of the age or location of the dwelling or the age of the neighborhood or census tract where the dwelling is located in a manner that has a discriminatory effect; requiring each GSE to submit data to assist the Secretary in investigating whether a mortgage lender with which the GSE does business has failed to comply with the Fair Housing Act; requiring each GSE to submit data to the Secretary to assist in investigating whether a mortgage lender with which the GSE does business has failed to comply with the Equal Credit Opportunity Act (ECOA) and to submit information to ECOA enforcement agencies; obtaining information on Fair Housing Act and ECOA violations and providing that to the GSEs; directing the GSEs to take remedial actions against lenders with discriminatory lending practices; and periodically reviewing and commenting on the GSEs' underwriting and appraisal guidelines to ensure that such guidelines are consistent with the Fair Housing Act and FHEFSSA.

2. All power and authority necessary to carry out the Fair Housing provisions of FHEFSSA at 12 U.S.C. 4545 including, but not limited to: requiring additional reports or other information concerning GSE activities; requiring the GSEs to provide data underlying any of the reports required under 24 CFR part 81 and to conduct additional analyses concerning any report required under 24 CFR part 81; requesting the Director of the Office of Federal Housing Enterprise Oversight to bring actions to enforce violations of 12 U.S.C. 4545; and under 24 CFR 81.102 to independently verify the accuracy and completeness of the data, information, and reports provided by each GSE, including conducting on-site verification when such steps are reasonably related to determining whether a GSE is complying with 12 U.S.C. 4541–4589 and the GSEs' Charter Acts.

3. All power and authority to carry out the Fair Housing provisions of FHEFSSA at 12 U.S.C. 4545 respecting access to information at 12 U.S.C. 4543 and 4546 including, but not limited to, recommending the invocation of 5

U.S.C. 552(b)(4), (6), and (8); and not providing public access to proprietary data.

Section B. No Authority to Redelegate

The Assistant Secretary for Fair Housing and Equal Opportunity may not redelegate to employees of the Office of Fair Housing and Equal Opportunity any of the power and authority delegated under this redelegation.

Authority: Secs. 1321, 1323, 1325, 1326 and 1327 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, 12 U.S.C. 4541, 4543, 4545, 4546 and 4547; section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 5, 1999.

William Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 99–3466 Filed 2–11–99; 8:45 am]

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federal register

Friday
February 12, 1999

Part VII

Department of Commerce

Bureau of the Census

15 CFR Part 30

Amendment to Foreign Trade Statistics Regulations: Provisions for Filing Shipper's Export Data Electronically Using the Automated Export System, (AES); Proposed Rule

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

[Docket No. 980929251–8329–02]

RIN 0607–AA19

Amendment to Foreign Trade Statistics Regulations: Provisions for Filing Shipper's Export Data Electronically Using the Automated Export System (AES)

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of the Census (Census Bureau) proposes amending the Foreign Trade Statistics Regulations (FTSR) to add provisions for filing shipper's export data electronically using the Automated Export System (AES). The AES is an export information gathering and processing system developed through cooperative efforts between the U.S. Customs Service (Customs), the Census Bureau, other Federal agencies, and the export community. The AES is a completely voluntary system that provides an alternative to filing the paper Shipper's Export Declaration (SED) and will greatly streamline and improve the exporting process. Export information is collected electronically and edited immediately, and errors are detected and corrected at the time of filing. AES is a nationwide system operational at all ports and for all methods of transportation. Customs is also revising appropriate sections of its Customs Regulations in a document published elsewhere in this issue of the **Federal Register**. The Customs regulations will conform to the electronic filing provisions and requirements contained in this proposed rule.

DATES: Written comments must be submitted on or before April 13, 1999.

ADDRESSES: Address all written comments on this proposed rulemaking to the Director, Bureau of the Census, Room 2049, Federal Building 3, Washington, D.C. 20233.

FOR FURTHER INFORMATION CONTACT: C. Harvey Monk, Jr., Chief, Foreign Trade Division, Bureau of the Census, Room 2104, Federal Building 3, Washington, D.C. 20233–6700, by telephone on (301) 457–2255, by fax on (301) 457–2645, or by E-mail at: c.h.monk.jr@ccmail.census.gov.

SUPPLEMENTARY INFORMATION:

Background

On October 9, 1998, Customs and the Census Bureau published a joint notice in the **Federal Register** (63 FR 54438) that informed the public of the current status of the AES. The AES is an electronic reporting system jointly developed by the Census Bureau and Customs that allows exporters or their authorized forwarding agents to transmit commodity SED information, and carriers to transmit transportation (outbound manifest) information. That notice also informed the public of other developments affecting the implementation of the AES and announced that the Census Bureau and Customs would be developing regulations to implement provisions and requirements for filing export information electronically through the AES. Since the Background information contained in that notice fully recounts the development of the AES to date, it is incorporated here by reference. Customs is also revising appropriate sections of its Customs Regulations, 19 CFR, Chapter 1, to reference Census Bureau regulations that will provide for electronic filing requirements using the AES to provide for certain procedural safeguards regarding applicant's/participant's rights vis-a-vis Customs actions, and to provide for a Sea Carriers Manifest Module for the submission of manifest information in the ocean environment. (See Customs' notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.)

The AES is a joint venture between Customs, the Census Bureau, and other Federal agencies that will provide a seamless Government export information processing system to allow the trade community to report export data electronically. The AES is also the cornerstone of Customs' and the Census Bureau's reinvestment strategy to support and facilitate the movement of exports. Automation will help remove the time consuming paper processing barriers that now hinder the flow of trade. The AES will greatly improve the accuracy of the export data provided to the Census Bureau, and will allow the Census Bureau, in turn, to provide more accurate export data and a wider range of export data needed by businesses to stay competitive in the global trade market today. The AES is in alignment with the long-term global shift to Electronic Data Interchange (EDI), the North American Free Trade Agreement (NAFTA), and the General Agreement on Tariff and Trade (GATT) making it easier to do business in multiple countries.

The AES will result in the elimination of redundant reporting of export data to multiple agencies. It brings savings in both human resources and paper handling. It greatly increases the accuracy of trade statistics, which will allow for improvement in national economic policy making. Accurate trade information, policy decisions based on sound balance of trade information, prohibition of illegal exports, and effective enforcement of license requirements can be achieved while facilitating the flow of trade. Although paper filing of the SED and manifest documents will still be permitted, it is anticipated that electronic filing through the AES will be the preferred method of export reporting by the trade community in the near future.

This notice of proposed rulemaking includes provisions agreed upon in the Interest Based Negotiations (IBN), between Customs, the Census Bureau, and representatives of the trade community to create an effective automated export reporting program. To ensure that the AES meets current business practices and voluntary acceptance by the trade community, Customs and the Census Bureau entered into IBN with members of the trade community to discuss system enhancements and time frames for the submission of commodity information. As a result of the IBN, two significant improvements to the AES were agreed to: (1) the creation of a filing option that requires no pre-departure information (with the filing of full commodity information within ten (10) working days from the date of exportation); and (2) creation of a two-stage filing option that allows for transmissions where some basic export information is filed prior to exportation with the remainder of the information filed within five (5) working days from the date of exportation.

General Description of the AES Process

The export process begins when the exporter decides to export merchandise as specified in § 30.1. Once the exporter makes this decision, the exporter or his authorized forwarding agent makes shipping arrangements with the carrier. The exporter or his authorized forwarding agent transmits the shipper's export information using the AES. This information can come directly from the exporter or his authorized agent or indirectly from the aforementioned through a service center or port authority. The shipper's export data are transmitted in a timely manner in accordance with the provisions

contained in electronic filing Options 2, 3 and 4 (see § 30.61, *Electronic Filing options*). The AES validates the data against editing tables and U.S. Government agency requirement files and generates either a confirmation message or a fatal error message. The carrier or an authorized forwarding agent transmits the export manifest data using the AES. The AES validates the transportation data then generates either a confirmation message or an error message. The exporter, carrier, or an authorized forwarding agent must attend to any errors generated by the AES. The AES allows the exporter, carrier, or an authorized forwarding agent to transmit corrections.

Program requirements

In order to include provisions for the electronic filing of shipper's export information, the Census Bureau will: (a) amend existing sections of the Foreign Trade Statistics Regulations (FTSR), 15 CFR Part 30, and (b) add a new Subpart E to the FTSR to include provisions for the electronic filing of shipper's export data.

The Census Bureau proposes amending appropriate sections of the FTSR to include provisions for the electronic reporting of export data using the AES.

The Census Bureau proposes amending § 30.1, *''General statement of requirements for Shipper's Export Declarations,''* to add a reference that requirements for filing shipper's export data electronically can be found in the new Subpart on electronic filing requirements.

The Census Bureau proposes amending the introductory text of § 30.7, *''Information required on Shipper's Export Declarations,''* to specify that the information in this section only applies to the paper SED and referring users to the new Subpart for information required for electronic filing of shipper's export data.

The Census Bureau proposes revising § 30.39, *''Authorization for reporting statistical information other than by means of individual Shipper's Export Declarations filed for each shipment,''* to replace existing electronic filing programs with the AES and to reflect current Census Bureau authority to authorize alternative methods of filing shipper's export data.

The Census Bureau proposes amending § 30.91, *''Confidential information, Shipper's Export Declarations,''* item (a) *''Confidential status''* to clarify that confidentiality provisions apply to all export information supplied to the Census Bureau whether filed electronically or in any other approved format.

To include new provisions and requirements for the electronic filing of shipper's export information using the AES, the Census Bureau proposes to add a new Subpart (Subpart E) in the current FTSR on electronic filing requirements for submitting shipper's export information. To accomplish this, the current Subpart E—General Requirements-Importers—will be redesignated to read Subpart F, and Subpart E will be renamed and reserved for ''Electronic Filing Requirements-Shippers Export Information.'' The current Subpart F will be redesignated Subpart G—Special Provisions for Particular Types of Import Transactions. The current Subpart G will be redesignated Subpart H—General Administrative Provisions.

The proposed new Subpart E—Electronic Filing Requirements-Shipper's Export Information will—consist of §§ 30.60 through 30.66 to include:

§ 30.60 General requirements for filing export and manifest data electronically using the Automated Export System (AES)
§ 30.61 Electronic filing options
§ 30.62 Certification, qualifications and standards
§ 30.63 Information required to be reported electronically through AES (data elements)
§ 30.64 Transmitting and correcting AES information
§ 30.65 Annotating the proper exemption legends for shipments transmitted electronically
§ 30.66 Recordkeeping and documentation requirements

The revisions contained in this notice of proposed rulemaking are consistent with the provisions of the Customs Regulations. The U.S. Customs Service, Department of the Treasury, concurs with the provisions contained in this notice of proposed rulemaking.

Rulemaking Requirements

This notice of proposed rulemaking is exempt from all requirements of Section 553 of the Administrative Procedures Act because it deals with a foreign affairs function (5 U.S.C. (A) (1)). However, this notice of proposed rulemaking is being published with an opportunity for public comment because of the importance of the issues raised by this notice of proposed rulemaking to the trade community.

Regulatory Flexibility Act

Because a notice of proposed rulemaking is not required by 5 U.S.C. 553 or any other law, a Regulatory Flexibility Analysis is not required and has not been prepared (5 U.S.C. 603(a)).

Executive Orders

This notice of proposed rulemaking has been determined to be not significant for purposes of Executive Order 12866. This rule does not contain policies with Federalism implications sufficient to warrant preparation of the Federalism assessment under Executive Order 12612.

Paperwork Reduction Act

Notwithstanding any other provisions of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This notice of proposed rulemaking covers collections of information subject to the provisions of the PRA, which were cleared by OMB under OMB control number 0607–0152.

This notice of proposed rulemaking will have no impact on the current reporting-hour burden requirements as approved under OMB control number 0607–0152 under provisions of the PRA of 1995, Public Law 104–13.

List of Subjects in 15 CFR Part 30

Economic statistics, Exports, Foreign trade, Reporting and recordkeeping requirements.

Proposed Amendments to 15 CFR Part 30

For the reasons set out in the preamble, the Census Bureau proposes to amend 15 CFR chapter I, part 30, as follows:

PART 30—FOREIGN TRADE STATISTICS

1. The authority citation for 15 CFR part 30 continues to read as follows:

Authority: 5 U.S.C. 301; 13 U.S.C. 301–307; Reorganization Plan No. 5 of 1950 (3 CFR 1949–1953 Comp., 1004); Department of Commerce Organization Order No. 35–2A. August 4, 1975, 40 FR 42765.

Subpart A—General Requirements—Exporters

2. Section 30.1 is amended by adding paragraph (c) to read as follows:

§ 30.1 General statement of requirements for Shipper's Export Declarations.

* * * * *

(c) In lieu of filing paper Shipper's Export Declarations as provided above, exporters or their authorized forwarding

agents have the option to file shipper's export information electronically, as provided in Subpart E of this part. The Electronic filing requirements for filing shipper's export declaration information are contained in Subpart E of this part, Electronic Filing Requirements—Shipper's Export Information.

3. Section 30.7 is amended by revising the introductory text to read as follows:

§ 30.7 Information required on Shipper's Export Declarations.

The following information shall be furnished in the appropriate spaces provided on the paper copy of the Shipper's Export Declaration and shall conform to the requirements set forth in this section. (See § 30.92 for information as to the statistical classification Schedules C and D referred to in this section. Also, see § 30.8 for information required on Form 7513 in addition to these requirements.) For information required to be filed electronically see § 30.63.

* * * * *

Subpart C—Special Provisions Applicable Under Particular Circumstances

4. Section 30.39 is revised to read as follows:

§ 30.39 Authorization for reporting statistical information other than by means of individual Shipper's Export Declarations filed for each shipment.

(a) The Census Bureau, with the concurrence of appropriate government agencies, may authorize exemptions from the requirement of § 30.6 that a separate shipper's export declaration be filed for each shipment.

(b) Application for certification and approval to file shipper's export data electronically using the Automated Export System (AES) can be made directly to the Census Bureau in accordance with the provisions specified in § 30.60. Certification and approval procedures and qualification standards for filing shipper's export data electronically are contained in § 30.62.

(c) Authorization for other alternative methods of filing shipper's export information will be issued only when, in the judgment of the Census Bureau, complete and accurate information will be available on a prescribed basis from the records of the applicant, and where the alternate filing method for shipments represents a reduction of reporting cost or burden. Where export control is a consideration, such authorizations will be granted only when, in the judgment of the appropriate controlling government agency, the applicant has demonstrated that it has established adequate internal operating procedures and has taken other satisfactory safeguards to assure compliance with export control regulations of the appropriate government agency or agencies.

Subparts E through G [Redesignated as Subparts F Through H]

5. Subparts E through G are redesignated as Subparts F through H, respectively.

6. A new Subpart E, consisting of §§ 30.60 through 30.66, is added to read as follows:

Subpart E—Electronic Filing Requirements—Shipper's Export Information

Sec.

30.60 General requirements for filing export and manifest data electronically using the Automated Export System (AES).
30.61 Electronic filing options.
30.62 AES Certification, qualifications, and standards.
30.63 Information required to be reported electronically through AES (data elements).
30.64 Transmitting and correcting AES information.
30.65 Annotating the proper exemption legends for shipments transmitted electronically.
30.66 Recordkeeping and documentation requirements.

Subpart E—Electronic Filing Requirements—Shipper's Export Information

§ 30.60 General requirements for filing export and manifest data electronically using the Automated Export System (AES).

Automated Export System (AES) transmissions by exporters or their authorized agents that meet the requirements of this Subpart constitute the Shipper's Export Declaration (SED) for purposes of 15 CFR Part 30. This section outlines the general requirements for participating in the AES. Several filing options are available for transmitting shipper's export data. The first option is the standard paper filing of the SED. The AES will also provide AES participants with three electronic filing options for submission of shipper's export data.

(a) *Participation.* Participation in the AES is voluntary and is designed to use technology available to both large and small businesses. Companies that are not automated can submit data through a service center or port authority that provides the capability to communicate with the Customs Data Center in the same way as automated companies. Companies may also buy a software package designed by an AES certified software vendor. Certified trade participants can transmit to and receive data from the AES pertaining to merchandise being exported from the United States. Participants in the AES process, who may apply for AES certification, include exporters or their authorized forwarding agents, carriers, non-vessel operating common carriers (NVOCC), port authorities, software vendors, or service centers. Once becoming certified an AES filer must agree to stay in complete compliance with all export rules and regulations.

(b) *Letter of Intent.* The first requirement for all participation in AES, including approval for Option 4 filing privileges, is to submit a complete and accurate Letter of Intent to the Census Bureau. The Letter of Intent is a written statement of a company's desire to participate in AES. It must set forth a commitment to develop, maintain, and adhere to Customs and Census Bureau performance requirements and operations standards. Once the Letter of Intent is received, a U.S. Customs Client Representative and a Census Bureau Client Representative will be assigned to work with the company. The Census Bureau will forward additional information to prepare the company for filing export data using the AES. The format and content for preparing the Letter of Intent is provided in Appendix A of this part.

(c) *General filing and transmission requirements.* The data elements required for filing shipper's export data electronically are contained in § 30.63. For AES, the difference is that the certified filer must transmit the shipper's export information electronically using the AES, rather than delivering the paper SED to the carrier. When transmitting export information electronically, the AES filers must comply with the data transmission procedures determined by Customs and the Census Bureau (See § 30.62 for AES certification, qualifications, and standards).

(d) *General responsibilities of exporters, forwarding agents, and sea carriers.* (1) *Exporter and authorized forwarding agent responsibilities.* The exporter and/or their authorized forwarding agents, certified for AES filing, are responsible for:

(i) Transmitting complete and accurate information to the AES (see § 30.4(a) and § 30.7(d) (1), (2), and (e) for a delineation of responsibilities of exporters and authorized forwarding agents);

(ii) Transmitting information to the AES in a timely manner in accordance with the provisions and requirements contained in this Subpart;

(iii) Responding to messages identified as fatal error, warning, verify, or reminder generated by AES in accordance with the provisions contained in this Subpart;

(iv) Providing the exporting carrier with the required exemption statements or citations when an item or shipment is exempt from SED filing requirements in accordance with provisions contained in this Subpart;

(v) Transmitting corrections or cancellations to information transmitted to the AES as soon as the need for such changes is determined in accordance with provisions contained in this Subpart; and

(vi) Maintaining all necessary and proper documentation related to the AES export transaction in accordance with provisions contained in this Subpart.

(2) *Sea carrier responsibilities.* The exporting sea carrier is responsible for transmitting timely, accurate, and complete manifests and bills of lading information to AES for all cargo being shipped. The exporting sea carrier is also responsible for transmitting booking, receipt of booking, and manifest messages to AES. Customs and Census Bureau officials, with written agreement of the exporting sea carrier, can provide for alternative methods of filing manifest and SED information to that found in this Subpart. For exporting carrier responsibilities see Subpart B, of this part, General Requirements—Exporting Carriers. For electronic filing of manifest information using the AES, see 19 CFR 4.76, *Procedures and responsibilities for electronic filing of sea manifests through AES.*

§ 30.61 Electronic filing options.

As an alternative to filing paper Shipper's Export Declaration forms (Option 1), three electronic filing options for transmitting shipper's export information are available to exporters or their authorized forwarding agents. Two of the electronic filing options (Options 3 & 4) take into account that complete information concerning export shipments is not always available at the time of shipment. The available AES electronic filing options are as follows:

(a) *AES with full information transmitted prior to exportation (Option 2).* Option 2 provides for the electronic filing of *all* information required for exports to AES prior to exportation (see § 30.63 for information required to be reported electronically). Full predeparture information is always required to be transmitted to AES for the following specific types of shipments:

(1) Used self-propelled vehicles as defined in 19 CFR 192.1;

(2) Essential and precursor chemicals requiring a permit from the Drug Enforcement Administration;

(3) Shipments defined as ''sensitive'' by Executive Order; and

(4) Shipments where full export information is required prior to exportation by a Federal Government agency.

(b) *AES with partial information transmitted prior to exportation (Option 3).* Option 3 provides for the electronic filing of *specified* data elements to the AES prior to exportation (see Appendix B of this part for a list of specified data elements). Filing Option 3 is available for all methods of transportation. Option 3 is designed for those shipments for which full data are not available prior to exportation. No prior approval from the Census Bureau or Customs is required for certified AES filers to use Option 3. However, full predeparture information must be transmitted to the AES for certain specified transactions (as specified in Option 2). For shipments that require an export license, the exporter must file using Option 2 or 3, unless the licensing agency specifically approves the exporter for Option 4 filing for the licensed shipment under its jurisdiction. Where partial information is provided under Option 3, complete export information must be transmitted as soon as it is known, but not later than five (5) working days from the date of exportation. The exporter, their authorized forwarding agent, or other certified AES filer authorized by the exporter, must provide the exporting carrier with a unique shipment reference number prior to exportation.

(c) *AES with no information transmitted prior to exportation (Option 4).* Option 4 is only available for approved exporters and requires *no* export information to be transmitted electronically using AES prior to exportation. For approved Option 4 filers, all shipments (other than those requiring an export license, unless specifically approved by the licensing agency for Option 4 filing, and those specifically required under electronic filing Options 2 or 3) by all methods of transportation may be exported with no information transmitted prior to exportation. Certified AES authorized forwarding agents or service centers may transmit information post-departure on behalf of approved Option 4 exporters. All exporters filing a Letter of Intent for Option 4 filing privileges will be cleared through a formal review process by Customs, the Census Bureau, and other federal government agencies participating in the AES (partnership agencies) in accordance with provisions contained in § 30.62. Where exportation is made with no prior AES filing, complete export information should be transmitted as soon as it is known, but no later than ten (10) working days from the date of exportation. The exporter or their authorized forwarding agent must provide the exporting carrier with the exporter's Option 4 AES identification number prior to exportation.

§ 30.62 AES certification, qualifications, and standards.

(a) *AES certification process.* Certification for AES filing will apply to any exporter, authorized forwarding agent, carrier, consolidator, service center, port authority, or software vendor transmitting export information electronically using the AES. Applicants interested in AES filing must submit a Letter of Intent to the Census Bureau in accordance with the provisions contained in § 30.60. Customs and the Census Bureau will assign client representatives to work with the applicant to prepare them for AES certification. The AES applicant must perform an initial two-part communication test to ascertain whether the applicant's system is capable of both transmitting data to and receiving data from the AES. The applicant must demonstrate specific system application capabilities. The capability to correctly handle these system applications is the prerequisite to certification for participation in the AES. The applicant must successfully transmit the AES certification test. Assistance is provided by the Customs' and Census Bureau's client representatives during certification testing. These representatives make the sole determination as to whether or not the applicant qualifies for certification. Upon successful completion of certification testing, the applicant's status is moved from testing mode to operational mode. Upon certification, the filer will be required to maintain an acceptable level of performance in AES filings. The certified AES filer may be subject to repeat the certification testing process at any time to ensure that operational standards for quality and volume of data are maintained.

(1) *Forwarding agent certification.* Once an authorized forwarding agent has successfully completed the certification process, the exporter(s) using that forwarding agent need no further AES certification of their own. The certified forwarding agent must have a properly executed power of attorney, a written authorization from the exporter, or an SED signed by the exporter to transmit the exporter's data electronically using the AES. The

exporter or authorized forwarding agent that utilizes a service center or port authority must complete certification testing unless the service center or port authority has a formal power of attorney or written authorization from the exporter to submit the export information on behalf of the exporter.

(2) *AES certification letter.* The Census Bureau will provide the certified AES filer with a certification letter after the applicant has been approved for operational status. The certification letter will include:

(i) The date that filers may begin transmitting ''live'' data electronically using AES;

(ii) Reporting instructions; and

(iii) Examples of the required AES exemption legends.

(3) *AES filing standards.* The certified AES filer's data will be monitored and reviewed for quality, timeliness, and coverage. The Census Bureau will notify the AES filer in writing if they fail to maintain an acceptable level of quality, timeliness, and coverage in the transmission of export data or fail to maintain compliance with Census Bureau regulations contained in this chapter. The Census Bureau will direct that appropriate action to correct the specific situation(s) be taken.

(b) *Criteria for denial of applications requesting Option 4 filing status; appeal procedure.* Approval for Option 4 filing privileges will apply only to exporters. However, forwarding agents may apply for Option 4 filing privileges on behalf of an individual exporter. Option 4 applicants must submit a Letter of Intent to the Census Bureau in accordance with the provisions contained in § 30.60.

(1) *Option 4 approval process.* The Census Bureau will distribute the Letter's of Intent for Option 4 filing privileges to Customs and the other partnership agencies participating in the AES Option 4 approval process. Failure to meet the standards of the Census Bureau, Customs, or one of the partnership agencies is reason for nonselection or denial of the application for Option 4 filing privileges. Each partnership agency will develop its own internal Option 4 acceptance standards and each agency will notify the Census Bureau of the applicant's failure to meet that agency's acceptance standards. If the Census Bureau does not receive either notification of denial, or a request for extension from the partnership agency within thirty (30) calendar days after the date of referral of the Letter of Intent to the partnership agency, the applicant is deemed to be approved by that agency. The Census Bureau will provide the Option 4 applicant with an approval or denial letter. If a denial letter is issued, the Census Bureau will indicate the partnership agency that denied the application. The applicant must contact the denying partnership agency for the specific reason(s) for denial.

(2) *Grounds for denial of Option 4 filing status.* The Census Bureau may deny an exporter's application for Option 4 filing privileges for any of the following reasons:

(i) Applicant is not an established exporter, as defined in this chapter, with regular operations;

(ii) Applicant has failed to submit SED's to the Census Bureau for processing in a timely and accurate manner;

(iii) Applicant has a history of noncompliance with Census Bureau export laws and regulations contained in this chapter;

(iv) Applicant has been indicted, convicted, or is currently under investigation for a felony involving a violation of Federal export laws or regulations and the Census Bureau has evidence of probable cause supporting such violation, or the applicant is in violation of Census Bureau laws or regulations contained in this chapter; and

(v) Applicant has made or caused to be made in the Letter of Intent a false or misleading statement or omission with respect to any material fact.

(3) *Notice of nonselection and appeal procedures for Option 4 filing.* The Census Bureau will notify applicants in writing of the decision to either deny or approve the applicant for Option 4 filing privileges within thirty (30) days of receipt of the Letter of Intent by the Census Bureau, or if a decision cannot be reached at that time the applicant will be notified of an expected date for a final decision as soon as possible after the thirty (30) calendar days. Applicants for Option 4 filing privileges denied Option 4 status by other partnership agencies must contact those agencies regarding the specific reason(s) for nonselection and for their appeal procedures. Applicants denied Option 4 status by the Census Bureau will be provided with a specific reason for nonselection and a Census Bureau point of contact in the notification letter. Option 4 applicants may appeal the Census Bureau's nonselection decision by following the appeal procedure provided in paragraph (b)(5) of this section.

(4) *Revocation of Option 4 filing privileges.* The Census Bureau may revoke Option 4 filing privileges of approved Option 4 exporters for the following reasons:

(i) The exporter has made or caused to be made in the Letter of Intent a false or misleading statement or omission with respect to material fact;

(ii) The exporter submitting the Letter of Intent is indicted, convicted, or is currently under investigation for a felony involving a violation of Federal export laws or regulations and the Census Bureau has evidence of probable cause supporting such violation, or the applicant is in violation of Census Bureau laws or regulations contained in this chapter;

(iii) The exporter has failed to substantially comply with existing Census Bureau or other agency export regulations; or

(iv) The Census Bureau determines that continued participation in Option 4 by an exporter would pose a significant threat to national security interests such that their continued participation in Option 4 should be terminated.

(5) *Notice of revocation; appeal procedure.* Approved Option 4 filers whose Option 4 filing privileges have been revoked by other agencies must contact those agencies for their specific revocation and appeal procedures. When the Census Bureau makes a determination to revoke an approved Option 4 filer's AES Option 4 filing privileges, the exporter will be notified in writing of the reason(s) for the decision. The exporter may challenge the Census Bureau's decision by filing an appeal within thirty (30) calendar days of receipt of the notice of decision. In most cases, the revocation shall become effective when the exporter has either exhausted all appeal proceedings, or thirty (30) calendar days after receipt of the notice of revocation, if no appeal is filed. However, in cases when required by national security interests, revocations will become effective immediately upon notification. Appeals should be addressed to the Chief, Foreign Trade Division, Bureau of the Census, Washington, D.C. 20233. The Census Bureau will issue a written decision to the exporter within thirty (30) calendar days from the date of receipt of the appeal by the Census Bureau. If a written decision is not issued within thirty (30) calendar days, a notice of extension will be forwarded within that time period. The exporter will be provided with the reasons for the extension of this time period and an expected date of decision. Approved Option 4 exporters who have had their Option 4 filing status revoked may not reapply for this status for one year following written notification of the revocation. Such applications will not be considered before the one-year time period.

§ 30.63 Information required to be reported electronically through AES (data elements).

The information (data elements) listed in this section is required for shipments transmitted electronically through AES. The data elements as they pertain to electronic reporting are defined as paragraphs (a), (b), and (c) of this section. Those data elements that are defined in more detail in other sections of the FTSR are so noted. The data elements identified as ''mandatory'' must be reported for each transmission. The data elements identified as ''conditional'' must be reported if they are required for or apply to the specific shipment. The data elements identified as ''optional'' may be reported at the discretion of the exporter.

(a) Mandatory data elements are as follows:

(1) *Exporter/exporter identification.* (i) *Name and address of the exporter.* The exporter is any person in the United States who is the principal or seller in the export transaction. Generally the exporter is the U.S. manufacturer (if selling the merchandise for export), the U.S. seller, order party, or licensee on an export license. A forwarding agent may be reported as exporter when named as applicant and licensee on an export license. A foreign entity, not located in the United States at the time of export, must not be reported as exporter. (See § 30.4(a) and § 30.7(d) (1), (2), and (e) for details).

(ii) *Exporter's profile.* The exporter's Employer Identification Number (EIN) or Social Security Number (SSN) and exporter name, address, contact, and telephone number must be reported with the initial shipment. Subsequent shipments may be identified by either EIN, SSN, or DUNS (Dunn and Bradstreet) number. If no EIN, SSN, or DUNS number is available for the exporter, as in the case of a foreign entity being shown as exporter as defined in § 30.7(d), the border crossing number, passport number, or any other number assigned by U.S. Customs is required to be reported. (See § 30.7(d)(2) for a detailed description of the EIN.)

(2) *Date of exportation/date of arrival.* The exporter or the authorized forwarding agent in the export transaction must report the date the merchandise is scheduled to leave the United States for all modes of transportation. If the actual date is not known, report the best estimate of departure. The estimated date of arrival must be reported for shipments to Puerto Rico. (See § 30.7(r) for additional information.)

(3) *Ultimate consignee.* The ultimate consignee is the person, party or designee on the export license who is located abroad and actually receives the export shipment. The ultimate consignee known at the time of export must be reported. For goods sold en route, report ''SOLD EN ROUTE'' and report corrected information as soon as it is known. (See § 30.7(f) for more information.)

(4) *U.S. state of origin.* Report the 2-character postal abbreviation for the state in which the merchandise begins its journey to the port of export. (See § 30.7(t) (1) and (2) for more information.)

(5) *Country of ultimate destination.* Report the 2-character International Standards Organization (ISO) code for the country of ultimate destination. The country of ultimate destination, as shown on the export license, or the country as known to the exporter or principal party in interest in the export transaction at the time of export is the country in which the merchandise is to be consumed or further processed or manufactured. For goods sold en route, report the country of the first port of call and then report corrected information as soon as it is known. (See § 30.7(i) for more information.)

(6) *Method of transportation.* The method of transportation is defined as that by which the goods are exported or shipped. Report one of the codes listed in Part I of Appendix C of this part. (See § 30.7(b) for detailed information on method of transportation.)

(7) *Conveyance name.* The name of the carrier (sea—vessel name; others—carrier name) must be reported by the exporter or the exporter's agent as known at the time of shipment for all shipments leaving the country by sea, air, truck or rail. Terms such as ''airplane,'' ''train,'' ''truck,'' or ''international footbridge'' are not acceptable and will generate an error message. (See § 30.7(c) for more information.)

(8) *Carrier identification.* Report the 4-character Standard Carrier Alpha Code (SCAC) for vessel, rail, and truck shipments and the 2- or 3-character International Air Transport Association (IATA) Code for air shipments to identify the carrier actually transporting the merchandise out of the United States. (See § 30.7(c) for more information.)

(9) *Port of export.* Report the code of the U.S. Customs port of export in terms of Schedule D, ''Classification of Customs Districts and Ports.'' (See §§ 30.7(a) and 30.20(c) and (d) for more information on port of export.)

(10) *Related/nonrelated indicator.* Indicate if the shipment is between related parties. Report the information as defined in § 30.7(v).

(11) *Domestic or foreign indicator.* Indicate if the commodities are of domestic or foreign production. Report the information as defined in § 30.7(p).

(12) *Commodity classification number.* Report the 10-digit commodity classification number as provided in Schedule B, ''Statistical Classification of Domestic and Foreign Commodities Exported from the United States'' (Schedule B). The 10-digit commodity classification number provided in the Harmonized Tariff Schedule (HTS) may be reported in lieu of the Schedule B Commodity classification number except as noted in the headnotes of the HTS. (See § 30.7(l) for detailed information.)

(13) *Commodity description.* Report the commercial description in sufficient detail to permit the verification of the commodity classification number. (See § 30.7(l) for more information regarding reporting the description.)

(14) *First net quantity/unit of measure.* Report the primary net quantity in the specified unit of measure and the unit of measure as prescribed in the Schedule B or HTS or as specified on the export license.

(15) *Gross shipping weight.* Report the gross shipping weight in kilograms for vessel, air, truck, and rail shipments. Include the weight of containers but exclude the weight of carrier equipment. (See § 30.7(o) for more information.)

(16) *Value.* The value shall be the selling price or cost if not sold, including inland freight, insurance, and other charges to the U.S. port of export. Report the value in U.S. currency. (See § 30.7(q) for more information.)

(17) *Export information code.* Report the appropriate 2-character export information code as provided in Part II of Appendix C of this part.

(18) *Filer reference number.* The filer of the export transaction provides a unique reference number that allows for identification of the transaction in their system. This reference number must be unique for five years.

(19) *Line item number.* Report a line number for each commodity for a unique identification of the commodity.

(20) *Hazardous material indicator.* This is a ''Yes'' or ''No'' indicator identifying the shipment as hazardous as defined by the Department of Transportation.

(21) *In-bond code.* Report one of the 2-character in-bond codes listed in Part IV of Appendix C of this part to indicate the type of In-Bond or Not In-Bond shipment.

(b) Conditional data elements are as follows:

(1) *Forwarding agent/forwarding agent identification.* (i) *Name and*

address of the forwarding agent. The forwarding agent is any person in the United States or under jurisdiction of the United States who is authorized by the exporter to perform the services required to facilitate the export of merchandise out of the United States or the person named in the validated export license. (See §§ 30.4(a) and 30.7(e) for details.)

(ii) *Forwarding agent's profile.* The forwarding agent's identification number, EIN, DUNS, or SSN and name and address must be reported with the initial shipment. Subsequent shipments may be identified by the identification number.

(2) *Intermediate consignee.* The intermediate consignee is the intermediary (if any) who acts in a foreign country as an agent for the exporter or the principal party in interest or the ultimate consignee for the purpose of effecting delivery of the export shipment to the ultimate consignee or the person named on the export license. (See § 30.7(g) for more information.)

(3) *Foreign Trade Zone number.* Report the unique 5-character code assigned by the Foreign Trade Board that identifies the Foreign Trade Zone from which merchandise is withdrawn for export. (See § 30.7(t)(3) for more information.)

(4) *Foreign port of unloading.* For sea shipments only, the code of the foreign port of unloading should be reported in terms of the 5-digit codes designated in Schedule K, ''Classification of Foreign Ports by Geographic Trade Area and Country.'' (See § 30.7(h) for detailed definitions of port of unloading.)

(5) *License number/CFR citation/license code.* For licensable commodities, report the license number of the license issued for the merchandise. If no license is required, report the regulatory citation exempting the merchandise from licensing or the conditions under which the merchandise is being shipped that make it exempt from licensing. Report one of the 3-character codes listed in Part III of Appendix C of this part to indicate the type of license, permit, License Exception, or no license required.

(6) *Export Control Classification Number.* Report the Export Control Classification Number for merchandise as required by the Bureau of Export Administration Regulations (15 CFR Parts 730 through 774).

(7) *Second net quantity/unit of measure.* When Schedule B requires two units of quantity be reported, report the second net quantity in the specified unit of measure and the unit of measure as prescribed in the Schedule B or HTS. (See § 30.7(n) for more information.)

(8) *Used self-propelled vehicles.* Report the following items of information for used self-propelled vehicles as defined in 19 CFR 192.1:

(i) *Vehicle Identification Number.* Report the unique Vehicle Identification Number (VIN) in the proper format;

(ii) *Product Identification Number.* Report the Product Identification Number (PIN) for those used self-propelled vehicles for which there are no VINs;

(iii) *Vehicle title number.* Report the unique title number issued by the Motor Vehicle Administration; and

(iv) *Vehicle title state.* Report the 2-character postal abbreviation for the state or territory of the vehicle title.

(9) *Entry number.* Report the Import Entry Number when the export transaction is to be used as proof of export for import transactions such as In-Bond, Temporary Import Bond, Drawback, and so forth.

(10) *Wavier of prior notice.* This is a ''Yes'' or ''No'' indicator to determine if the person claiming drawback received a waiver of prior notice for the exported merchandise.

(11) *Booking number.* Report the booking number for all sea shipments.

(c) Optional data elements are as follows:

(1) *Marks and numbers.* The exporter or the authorized forwarding agent in the export transaction may opt to report any special marks or numbers that appear on the physical merchandise or its packaging that can identify the shipment or a portion thereof. (See § 30.7(j) for more information.)

(2) *Equipment number.* Report the container number for containerized shipments. This number may be reported in conjunction with the booking number.

(3) *Seal number.* Report the security seal number of the seal placed on the equipment.

§ 30.64 Transmitting and correcting AES information.

(a) The exporter or their authorized forwarding agent is responsible for electronically transmitting corrections, cancellations, or amendments to shipment information previously transmitted using the AES. Corrections, cancellations, or amendments should be made as soon as possible after exportation when the error or omission is discovered.

(b) For shipments where the exporter or their authorized forwarding agent has received an error message from AES, the corrections must take place immediately. A fatal error message will cause the shipment to be rejected. This error must be corrected prior to exportation of the merchandise. For shipments where a warning message is received, the correction must be made within four (4) working days of receipt of the transmission, otherwise AES will generate a reminder message to the filer. For shipments with a verify message, corrections when warranted should be made as soon as possible after notification of the error by the AES.

§ 30.65 Annotating the proper exemption legends for shipments transmitted electronically.

The exporter or their authorized forwarding agent is responsible for annotating the proper exemption legend on the bill of lading, airway bill, or other commercial loading document for presentation to the carrier, either on paper or electronically prior to export. The exemption legend will identify that the shipment information has been transmitted electronically using the AES. The exemption legend will include the statement ''NO SED REQUIRED–AES'' followed by the filers identification number and a unique shipment reference number or the returned confirmation number. For exporters who have been approved to participate in Filing Option 4, the exemption statement will include the exporter's identification number and the filers identification number if other than the exporter. The exemption legend must appear on the first page of the bill of lading, airway bill, or other commercial loading document and must be clearly visible.

§ 30.66 Recordkeeping and documentation requirements.

All parties to the export transaction (owners and operators of the exporting carriers and exporters and their authorized forwarding agents) must retain documents or records verifying the shipment for five (5) years from the date of export. Customs, the Census Bureau, and other participating agencies may require that these documents be produced at any time within the 5-year time period for inspection or copying. These records may be retained in an elected format including electronic or hard copy. Acceptance of the documents by Customs or the Census Bureau does not relieve the exporter or their authorized forwarding agent from providing complete and accurate information after the fact.

Subpart H—General Administrative Provisions

7. Section 30.91 is amended by revising paragraph (a) to read as follows:

§ 30.91 Confidential information, Shipper's Export Declarations.

(a) *Confidential status.* The Shipper's Export Declaration is an official Department of Commerce form, prescribed jointly by the Bureau of the Census and the Bureau of Export Administration. Information required thereon is confidential, whether filed electronically or in any other approved format, for use solely for official purposes authorized by the Secretary of Commerce. Use for unauthorized purposes is not permitted. Information required on the Shipper's Export Declarations may not be disclosed to anyone except the exporter or his agent by those having possession of or access to any copy for official purposes, except as provided in paragraph (e) of this section.

* * * * *

8. Appendices A, B, and C are added to part 30 to read as follows:

Appendix A to Part 30—Format for Letter of Intent, Automated Export System (AES)

A. Letters of Intent should be on company letterhead and must include:

1. Company Name, Address (no P.O. Boxes), City, State, Postal Code
2. Company Contact Person, Phone Number, Fax Number
3. Technical Contact Person, Phone Number, Fax Number
4. Corporate Office Address, City, State, Postal Code
5. Computer Site Location Address, City, State, Postal Code
6. Type of Business—Exporter, Freight Forwarder/Broker, Carrier, NVOCC, Port Authority, Software Vendor, Service Center, etc. (Indicate all that apply)
   (i) Are you currently an AERP Participant? What is the AERP symbol?
   (ii) Freight Forwarder/Brokers indicate the number of exporters for whom you file export information (AERP and SEDs).
   (iii) Exporters indicate whether you are applying for AES, Option 4 filing, or both.
7. U.S. Ports of Export Currently Utilized
8. Average Monthly Volume of Export Shipments
9. Average Monthly Value of Export Shipments
10. Filer Code—EIN, DUNS, SSN, or SCAC (Indicate all that apply)
11. Software Vendor Name, Contact, and Phone Number (if using vendor provided software)
12. Look-a-Like Remote to Copy (as provided by vendor)
13. Modes of Transportation used for export shipments (Air, Vessel, Truck, Rail, etc.)
14. Types of Merchandise exported
15. Types of Licenses or Permits
16. Anticipated Implementation Date

B. The following self-certification statement, signed by an officer of the company, must be included in your letter of intent: ''I hereby certify that *Company Name* is, and will continue to be, in compliance with all applicable laws and regulations.''

C. Send AES Letter of Intent to: Chief, Foreign Trade Division, Bureau of the Census, Washington, DC 20233. Or, the copy can be faxed to: 301–457–1159.

Appendix B to Part 30—Required Pre-Departure Data Elements for Filing Option 3

(1) Identifier of Exporter—EIN, etc.
(2) Forwarding Agent I.D.—EIN, etc.
(3) Carrier I.D. (SCAC or IATA).
(4) Country of Ultimate Destination—ISO code.
(5) Name of Ultimate Consignee.
(6) (a) Commodity description or (b) Optional—Schedule B No. or HTS code
(7) Unique Identifying Number—shipment reference number (17 characters or less), e.g., airway bill number. (The unique identifying number/shipment reference number must appear in the shipper's reference number field on the ocean bill of lading).
(8) Intended U.S. Port of Export
(9) Estimated Date of Export.
(10) Transportation Reference Number, e.g., vessel booking number, airway bill number.
(11) Method of Transportation (MOT) code.
(12) HAZMAT—Y/N
(13) License code.
(14) Export License Number.

Appendix C to Part 30—Electronic (AES) Filing Codes

Part I—Method of Transportation Codes

10 Sea
11 Sea Containerized
12 Sea (Barge)
20 Rail
30 Truck
32 Auto
33 Pedestrian
34 Road, Other
50 Mail
40 Air
60 Passenger, Hand Carried
70 Fixed Transport (Pipeline and Powerhouse)

Part II—Export Information Codes

LC Shipments valued $2,500 or less per classification number that are required to be reported
TP Temporary exports of domestic merchandise
IP Shipments of merchandise imported under a Temporary Import Bond for further manufacturing or processing
IR Shipments of merchandise imported under a Temporary Import Bond for repair
DB Drawback
CH Shipments of goods donated for charity
FS Foreign Military Sales
OS All other exports
HV Shipments of personally owned vehicles
HH Household and personal effects
SR Ship's stores
TE Temporary exports to be returned to the United States
TL Merchandise leased for less than a year
IS Shipments of merchandise imported under a Temporary Import Bond for return in the same condition
CR Shipments moving under a carnet
GP U.S. government shipments
LV Shipments valued $2,500 or less that are not required to be reported
SS Carriers' stores for use on the carrier
MS Shipments consigned to the U.S. armed forces
GS Shipments to U.S. government agencies for their use
DP Diplomatic pouches
HR Human remains
UG Gift parcels under Bureau of Export Administration License Exception GFT
IC Interplant correspondence
SC Instruments of international trade
DD Other exemptions:
  Currency
  Airline tickets
  Bank notes
  Internal revenue stamps
  State liquor stamps
  Advertising literature
  Shipments of temporary imports by foreign entities for their use
RJ Inadmissible merchandise

(See §§ 30.50 through 30.58 for information on filing exemptions.)

Part III—License Codes

Department of Commerce, Bureau of Export Administration (BXA) Licenses

C30 BXA Licenses
C31 SCL
C32 NLR (CCL/NS Column 2)
C33 NLR (All Others)
C34 Future Use
C35 LVS
C36 GBS
C37 CIV
C38 TSR
C39 CTP
C40 TMP
C41 RPL
C42 GOV
C43 GFT
C44 TSU
C45 BAG
C46 AVS
C47 APR
C48 KMI
C49 TAPS
C50 ENC

Nuclear Regulatory Commission (NRC) Codes

N01 NRC Form 250/250A
N02 NRC General License

Department of State, Office of Defense Trade Controls (ODTC) Codes

SAG Agreements
S00 License Exemption Citation
S05 DSP–5
S61 DSP–61
S73 DSP–73
S85 DSP–85

Department of Treasury, Office of Foreign Assets Control (OFAC) Codes

T10 OFAC Specific License
T11 OFAC General License

Other License Types

OPA Other Partnership Agency Licenses not listed above

Part IV—In-Bond Codes

70 Not-In-Bond
36 Warehouse Withdrawal for Immediate Exportation
37 Warehouse Withdrawal for Transportation and Exportation
62 Transportation and Exportation
63 Immediate Exportation
67 Immediate Exportation from a Foreign Trade Zone
68 Transportation and Exportation from a Foreign Trade Zone

Dated: January 19, 1999.

Kenneth Prewitt,

Director, Bureau of the Census.

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Friday
February 12, 1999

Part VIII

Department of the Treasury

Customs Service

19 CFR Parts 4, 101, and 192

Automated Export System (AES); Proposed Rule

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 101, and 192

RIN 1515–AC42

Automated Export System (AES)

AGENCY: Customs Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Automated Export System (AES) is an electronic reporting system jointly developed by the Bureau of the Census (Census) and Customs that allows exporters to electronically transmit commodity information contained on Shipper's Export Declarations and sea carriers to electronically transmit outbound vessel manifest information. A general description of how AES works, including the application, qualification, and certification procedures for exporters and sea carriers is being proposed in a document issued by the Bureau of the Census in today's **Federal Register**. This document proposes to amend the Customs Regulations to cross-reference the Census proposed regulations. Also, this document proposes to set forth criteria under which Customs will determine whether to approve an exporter for the option to transmit commodity information through AES after a carrier has left the United States (post-departure). This document also sets forth the appeal procedures for AES exporters if Customs denies the exporter the post-departure option; or, if Customs approves the post-departure option for the AES exporter, the grounds for revocation of the use of the option and the appeal procedures if Customs revokes the use of that option.

Exporters that utilize the AES can expect to benefit from fewer delays in the processing of export information by Customs due to missing paperwork; fewer, but faster inspections of export shipments; and reduced administration costs due to automation.

DATES: Comments must be received on or before April 13, 1999.

ADDRESSES: Written comments should be addressed to the U.S. Customs Service, Office of Regulations and Rulings, Regulations Branch, Suite 3000, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229. Comments submitted may be inspected at the U.S. Customs Service, Office of Regulations and Rulings, Regulations Branch, Suite 3000, 1300 Pennsylvania Avenue, NW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Maritza Castro, Office of Field Operations, Outbound Process, (703) 921–7465.

SUPPLEMENTARY INFORMATION:

Background

On October 9, 1998, Customs and the Bureau of the Census (Census) published a joint notice in the **Federal Register** (63 FR 54438) that informed the public of the current status of the Automated Export System (AES), an electronic reporting system jointly developed by Census and Customs that allows exporters to transmit commodity information contained on Shipper's Export Declarations (SEDs), and carriers to transmit outbound vessel manifest information. That notice informed the public of developments affecting the implementation of the AES and announced that Census and Customs would be developing regulations to implement provisions and requirements for filing export information electronically through the AES. Since the Background information contained in that notice fully recounts the development of the AES to date, it is incorporated here by reference.

AES Requirements in General

In a separate document published in today's **Federal Register**, the Bureau of the Census is proposing to set forth general requirements for the AES in the Census Regulations (chapter I of title 15 of the Code of Federal Regulations) at redesignated subpart E of part 30 (15 CFR part 30). Although Customs proposes in this document to cross-reference the Census Regulations that will provide for the AES, a general description of the AES follows.

1. *Eligibility.* Participation in AES is voluntary. Regarding the submission of SEDs, AES allows exporters, agents, and service companies (collectively referred to as export commodity information filers) that are required to report commodity export information to electronically file such information on all export commodities regardless of the mode of transportation in which the commodities are being exported. *See,* proposed § 30.60(a) of the Census Regulations. Regarding outbound vessel manifest information, sea carriers will be eligible to electronically file outbound manifest information pursuant to the Sea Carrier's Module of AES proposed in this document and in the Census proposal. It is expected that modules will be created at a later date that will allow air carriers and rail carriers to electronically file outbound manifest information.

2. *Application.* Export commodity information filers and sea carriers who wish to participate in AES may apply by filing a ''Letter of Intent,'' that contains the information described in proposed § 30.60(b) of the Census Regulations. For export commodity information filers, the application will provide up to three electronic filing options (denominated as options 2–4) for the submission of commodity information, in addition to the present method of filing paper documents (denominated as option 1):

a. Filing Full Pre-Departure Information (Option 2). Under this option, all commodity information is required to be transmitted by the export commodity information filer before the export of the merchandise;

b. Filing Partial Pre-Departure Information (Option 3). Under this option, only fourteen (14) identified data elements of commodity information are required to be transmitted by the export commodity information filer prior to exportation. The remaining data elements of commodity information are to be transmitted within five (5) business days of the date of exportation; or

c. Filing with No Pre-Departure Information (Option 4). This option is only available to approved exporters wanting to export qualifying commodities without submitting any pre-departure information. However, complete commodity information must be electronically filed within ten (10) business days of exportation. (Note that export commodity information filers other than exporters, such as agents and service companies, may not apply for this filing option. The meaning of exporter in this context will be defined by Census.)

3. *Certification of AES Filers and Approval of Option 4 for Exporters.* The AES certification procedure generally provides that, following the processing of the Letter of Intent to participate in the AES, the prospective AES filer must perform an initial two-part communication test so that it can be ascertained whether the prospective filer's electronic system is capable of communicating with the AES; applicants will be tested for the ability to send and receive messages. For applicants applying for AES filing Options 2 or 3 or for electronic filing through the Sea Carrier's Module of AES, Customs and Census will make the determination of whether a particular export commodity information filer or sea carrier is qualified, and certify them to participate in AES. *See,* proposed § 30.62 of the Census Regulations. Once an export commodity information filer is qualified and certified to use either Option 2 or 3 as an AES participant, he may electronically file export commodity information without any further approval process. Similarly, once a sea carrier is qualified and certified to use the Sea Carrier's Module as an AES participant, it may electronically file outbound manifest information without any further approval process.

For exporters applying for Option 4 (post-departure) filing privileges, the application will be reviewed by a panel of participating partnership agencies for approval. (Agencies currently participating include Census, Customs, Bureau of Export Administration, Nuclear Regulatory Commission, and the Office of Foreign Assets Control.)

4. *Responsibilities of participants in AES.* The responsibilities of participants include, for export commodity information filers, making timely transmissions of the required export data elements, as proposed in § 30.63 of the Census Regulations, and for sea carrier

module filers, making timely transmissions of the messages proposed in § 4.76 of the Customs Regulations. Participants are also responsible, in accordance with the AES Trade Interface Requirements handbook, which will be posted to the Customs internet web site (www.customs.ustreas.gov) and will be available through the Customs Electronic Bulletin Board (703–921–6155), for responding to government-generated messages, making appropriate corrections or cancellations to previously transmitted information, and maintaining proper records concerning AES transactions. AES participants are subject to the same penalty provisions that apply to paper filers of SED and manifest information. *See*, proposed § 30.60 of the Census Regulations. If employing non-AES carriers or forwarders, an AES export commodity information filer will be responsible for identifying his status as an AES participant on transportation documents so that Customs and the carrier know that paper SEDs are not required because the filing was made via AES. *See*, proposed § 30.65 of the Census Regulations. AES participants will be required to comply with the recordkeeping requirements proposed in § 30.66 of the Census Regulations and any other applicable recordkeeping requirements that AES participants are subject to under existing law.

Customs Denial of Requests for Option 4 Filing Status; Revocation of Option 4 Filing Privileges Granted

Applicants requesting Option 4 filing status will have their applications reviewed by the panel of participating partnership agencies (identified above). (AERP participants who apply for Option 4 privileges will receive priority handling of their application. AERP participants should note their status on their Letter of Intent to ensure priority processing. Current participating AES–PASS filers will be grandfathered into Option 4.) Although each agency has its own evaluation criteria, a rejection by any of the agencies will result in non-acceptance of the application for Option 4 filing status. Following inter-agency review of applicants' credentials, Census will notify applicants in writing of their approval or denial within thirty (30) calendar days of receipt of the application.

Customs may deny an applicant's request for Option 4 filing status, based on any of 4 separate grounds. If Customs denies an applicant's request for Option 4 status, the applicant will receive a letter from Census specifying the grounds on which Customs bases its denial and setting forth the appeal procedures the applicant may use to challenge Customs decision.

Once approved for Option 4 privileges, Customs may revoke the privilege, based on any of 4 separate grounds. Such participants will be advised in writing by Customs of the basis for the revocation and may file an appeal to challenge Customs decision. In these cases, the AES filer will be allowed to continue filing under Option 4 until the administrative appeal process has been exhausted. However, Customs may revoke a participant's Option 4 privileges immediately in cases of intentional violations of any Customs law or when required by national security.

The Sea Carrier's Module

Since 1996, Customs has held a series of open meetings with representatives of the sea carrier industry to discuss methods of improving compliance with manifest regulations and to create electronic manifesting procedures that conform to the current business practices of the industry. As a result of these meetings, Customs is proposing to require sea carriers to electronically file booking information (*i.e.*, cargo reservation information) before the loading and departure of the sea carrier as part of the AES outbound manifesting procedures.

It is proposed that booking information be provided to Customs through AES as the information becomes available as far in advance as practical of the loading of the vessel. It is proposed that the booking information be provided not later than seventy-two (72) hours prior to departure of the vessel and that booking information received by the carrier later in time, *i.e.*, within seventy-two (72) hours of a vessel's departure, will be transmitted immediately as it becomes available. Customs will use this advanced booking information to screen shipments for enforcement targeting.

It is also proposed that when an AES sea carrier receives the actual freight, it will notify Customs via AES by transmitting a ''Receipt of booking'' message. Customs will then notify the AES carrier if Customs will examine the booked cargo before the cargo is to be loaded on the vessel. If the booked cargo is scheduled by Customs for examination, then the carrier will not load the cargo until Customs examines and releases the cargo. Not later than one day after a vessel departs, an AES carrier will notify Customs of the date and time of the departure of the vessel (''Departure'' message).

Sea carriers will normally have ten (10) business days after the departure of the vessel to electronically file outbound vessel manifest information (''Manifest'' message), except as otherwise provided for in §§ 4.75 and 4.84 of the Customs Regulations. Even though a sea carrier files an electronic manifest, if paper SEDs are submitted by filers of the export commodity information, participant sea carriers will be responsible for submitting those SEDs to Customs within four (4) business days after departure of the vessel, unless another time frame is specified in §§ 4.75 or 4.84 of the Customs Regulations. Upon written agreement with participant sea carriers, Customs and Census can provide for an alternative to the location filing requirement for paper SEDs set forth in § 4.75(b).

Filing outbound vessel manifest information electronically through AES will be treated by Customs as meeting the outward cargo declaration filing requirements (CF 1302–A) required by §§ 4.63 and 4.75 of the Customs Regulations, if the procedures set forth in the AES Trade Interface Requirements handbook are followed.

Proposed Amendments Concerning AES, Customs Administrative Procedures for Option 4 Privileges, and the Sea Carrier's Transportation Module

In this document Customs is proposing to create a new § 4.76 describing the Sea Carrier's module of AES which cross-references the proposed Census Regulations on AES; and a new subpart 192 which generally describes AES, cross-references the proposed Census Regulations on AES, sets forth criteria under which Customs will determine whether to approve an exporter for the AES option to transmit commodity information after a carrier has left the United States (post-departure), sets forth appeal procedures for AES exporters if Customs denies the exporter the post-departure option, or, if Customs approves the post-departure option for the AES exporter, the grounds for revocation of the use of the option and the appeal procedures if Customs revokes the use of the option. Customs is also proposing to revise the authority citation for part 192 to more clearly show the statutory basis of Customs authority to collect and examine manifest and export data information.

Customs is also using this document as the vehicle to propose an amendment to the general provisions of Part 101 of the Customs Regulations to include a definition of the term ''business days.'' While the term ''business days'' is used in this document in reference to filing times for sea carriers, the definition is proposed to have applicability wherever the term is used throughout the Customs Regulations (19 CFR).

A more detailed description of the proposed regulatory changes follow:

Proposed § 4.76

Proposed § 4.76 is entitled ''Procedures and responsibilities of carriers filing outbound vessel manifest information via the AES.'' This section will provide that the Sea Carrier's Module of the AES allows sea carriers to submit required outbound vessel manifest data electronically. This section will cross-reference proposed subpart E of the Census Regulations (15 CFR Subpart E). Section 4.76 sets forth the types of messages sea carriers on the module will be required to transmit and the time frames for their transmission. Sea carriers certified to use the module and adhering to the procedures concerning the electronic submission of outbound vessel manifest information will meet the outward cargo declaration filing requirements (CF 1302–A) of §§ 4.63 and 4.75 of the Customs Regulations (19 CFR 4.63 and 4.75), except as otherwise provided in §§ 4.75 and 4.84, if the procedures set forth in the AES Trade Interface Requirements handbook are followed.

Revision of § 101.1

Section § 101.1 will be amended to define the term ''business days'' to mean the normal days of a work week: Monday through Friday, excluding national holidays as specified in § 101.6(a).

Revision of § 192.0

Section § 192.0 will be revised to account for the addition of a new Subpart B entitled ''The Automated Export System (AES).''

Proposed § 192.11

Proposed § 192.11, entitled ''Description of the AES'', will describe, in general terms, the nature of the electronic filing system as an alternate method for exporters to comply with the export reporting requirements, and cross-reference proposed subpart E of the Census Regulations (15 CFR subpart E) as providing more fully for the AES.

Proposed § 192.12

Proposed § 192.12, entitled ''Criteria for denial of applications requesting AES post-departure (Option 4) filing status; appeal procedures'', will state the four (4) grounds on which Customs will base its denial of an applicant's request for this status, and provide the appeal process by which an applicant may challenge Customs decision. The four (4) grounds for rejection will be that the applicant:

1. Is not an exporter, as defined in the Census Regulations;

2. Has a history of non-compliance with export regulations. For example, the exporter has a history of late electronic submissions of commodity information or a record of non-submission of required export documentation;

3. Has been indicted, convicted or is currently under an investigation, wherein Customs has developed probable cause, for a felony involving any Customs law or any export law administered by another government agency; or

4. Has made or caused to be made in the ''Letter of Intent'' a false or misleading statement or omission with respect to any material fact.

Applicants denied Option 4 status by Customs will have the opportunity to appeal the decision by following the appeal procedure provided at proposed § 192.13(b). Applicants will be notified of the status of their appeal within thirty (30) calendar days of receipt by Customs, or, if a decision cannot be reached at that time, the applicant will be notified of an expected date for the final decision as soon as possible after the 30 calendar days. Applicants that are not approved by Customs may reapply after one year from the date of the final decision.

Proposed § 192.13

Proposed § 192.13, entitled ''Revocation of AES participants' post-departure (Option 4) filing privileges; appeal procedures'', will state the 4 grounds on which Customs may revoke a participant's Option 4 privileges, and provide the appeal process by which applicants may challenge Customs decision. The 4 reasons for revocation will be that the filer:

1. Has made or caused to be made in the ''Letter of Intent'' a false or misleading statement or omission with respect to any material fact;

2. Is indicted, convicted or is currently under an investigation, wherein Customs has developed probable cause, for a felony involving any Customs law or any export law administered by another government agency;

3. Fails to substantially comply with export regulations. For example, the filer develops a history of late submissions of Option 4 commodity information or develops a history of non-compliance with other agencies' licensing regulations; or

4. Poses a significant threat to national security, such that his continued participation in Option 4 should be terminated.

Participants issued a revocation notice will have the opportunity to appeal the decision by contacting Customs at the address indicated within thirty (30) calendar days of receipt of notification. Applicants will be notified of the status of their appeal within thirty (30) calendar days of receipt by Customs, or if a decision cannot be reached at that time, the applicant will be notified of an expected date for the final decision as soon as possible after the 30 calendar days. Except as stated below, final revocation of Option 4 privileges will not take effect until all appeal procedures have been exhausted or until 30 calendar days after written notification of revocation, if no appeal is made. This will give the participant time to take corrective actions and include these actions as part of the appeal. However, Customs reserves the right to make the revocation effective immediately in cases of intentional violations of any Customs law on the part of the program participant or when required by national security. In such a case, the participant will be notified in writing and may appeal the decision, but will not be able to continue to file under Option 4 during the appeal process. The participants will be notified in writing of any revocation decision. Participants who have had their Option 4 privileges revoked, may still use the other two options for AES transmissions.

Comments

Before adopting this proposal as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, the Ronald Reagan Building, 1300 Pennsylvania St., N.W., Suite 3000, Washington, D.C.

Inapplicability of the Regulatory Flexibility Act, and Executive Order 12866

Pursuant to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities, because booking information is already collected in the ordinary course of business by sea carriers and the cost of transmitting the information electronically to Customs through AES, even if the carrier is not a certified AES participant, is not substantial.

Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Customs does request comments specifically concerning the economic impact of transmitting booking information on small carriers. This amendment does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). Comments on the collection of information should be sent to the OMB, Attention: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to Customs at the address set forth previously. Comments should be submitted within the time frame that comments are due regarding the substance of the proposal.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless the collection of information displays a valid control number.

The collection of information in these proposed regulations is at § 4.76, which provides for the transmission of booking information through the Sea Carrier's Module in the AES. Departure and manifest information is already approved under OMB control numbers: 1515–0062 for the General Declaration (Vessel Clearance) and 1515–0078 for the Cargo Declaration and the Cargo Declaration Outward with Commercial Forms. The paperwork burden for the application procedure for the Sea Carrier's Module is covered by the Census paperwork submission for proposed 15 CFR 30.60.

The booking information to be collected is necessary so that Customs can more effectively target high-risk shipments. The likely respondents are sea carriers that are required to submit outbound vessel manifest data.

The data which follows is presented in a range format. Depending on the size of the shipping company, the numbers reflecting the frequency of responses and the time associated with transmissions will vary:

Estimated total annual reporting and/or recordkeeping burden: 1,800–2,225 hours.

Estimated average annual burden per respondent/recordkeeper: 1–72 hours.

Estimated number of respondents and/or recordkeepers: 120–200.

Estimated annual frequency of responses: 6,500,000–8,000,000.

Comments are invited on:

a. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

b. The accuracy of the agency's estimate of the burden of the collection of information;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operations, maintenance, and purchase of services to provide information.

Drafting Information

The principal author of this document was Gregory R. Vilders, Attorney, Regulations Branch. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 4

Cargo vessels, Common carriers, Customs duties and inspection, Declarations, Exports, Foreign commerce and trade statistics, Freight, Inspection, Maritime carriers, Merchandise, Reporting and recordkeeping requirements, Shipping, Vessels.

19 CFR Part 101

Customs duties and inspection, Customs ports of entry, Exports, Foreign trade statistics, Harbors, Imports, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Shipments, Vessels.

19 CFR Part 192

Customs duties and inspection, Electronic filing, Export control, Reporting and recordkeeping requirements, Vessels.

Amendments to the Regulations

For the reasons stated above, it is proposed to amend parts 4, 101, and 192 of the Customs Regulations (19 CFR parts 4, 101, and 192), as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

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

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C.App. 3, 91.

* * * * *

2. A new § 4.76 is added to read as follows:

§ 4.76 Procedures and responsibilities of carriers filing outbound vessel manifest information via the AES.

(a) *The sea carrier's module.* The Sea Carrier's Module is a component of the Automated Export System (AES) (*see,* part 192, subpart B of this chapter) that allows for the filing of outbound vessel manifest information electronically (*see,* 15 CFR part 30). All sea carriers are eligible to apply for participation in the Sea Carrier's Module. Application and certification procedures for AES are found at 15 CFR 30.60. A sea carrier certified to use the module that adheres to the procedures set forth in this section and the Census Regulations (15 CFR part 30) concerning the electronic submission of an outbound vessel manifest information meets the outward cargo declaration filing requirements (CF 1302–A) of §§ 4.63 and 4.75 of this part, except as otherwise provided in §§ 4.75 and 4.84, and if procedures set forth in the AES Trade Interface Requirements handbook (see Customs internet website (www.customs.ustreas.gov)) are followed.

(b) *Responsibilities.* Carriers and their agents are responsible for reporting accurate and timely information and for responding to all notifications concerning the status of their transmissions and the detention and release of freight in accordance with the procedures set forth in the AES Trade Interface Requirements handbook. Customs will send messages to participant carriers regarding the accuracy of their transmissions. AES participants are required to comply with the recordkeeping requirements contained at § 30.66 of the Census Regulations (15 CFR 30.66) and any other applicable recordkeeping requirements. Where paper SEDs have been submitted by exporters, participant carriers will be responsible for submitting those SEDs to Customs within four (4) business days after the departure of the vessel, unless a different time requirement is specified by §§ 4.75 or 4.84 of this part. Upon written agreement with participant sea carriers, Customs and Census can provide for an alternative to the location filing requirement for paper SEDs set

forth in § 4.75(b) by which the participant carriers are otherwise bound.

(c) *Messages required to be filed within the sea carrier's module.* Participant carriers will be responsible for transmitting and responding to the following messages:

(1) *Booking.* Booking information identifies all the freight that is scheduled for export. Booking information will be transmitted to Customs via AES for each shipment as far in advance of departure as practical, but no later than seventy-two hours prior to departure for all information available at that time. Bookings received within seventy-two hours of departure will be transmitted to Customs via AES as received;

(2) *Receipt of booking.* When the carrier receives the cargo or portion of the cargo that was booked, the carrier will inform Customs so that Customs can determine if an examination of the cargo is necessary. Customs will notify the carrier of shipments designated for examination. Customs will also notify the carrier when the shipment designated for inspection is released and may be loaded on the vessel;

(3) *Departure.* No later than the first business day following the actual departure of the vessel, the carrier will notify Customs of the date and time of departure; and

(4) *Manifest.* Within ten (10) business days after the departure of the vessel, the carrier will submit the manifest information to Customs via AES for each booking loaded on the departed vessel. However, if the destination of the vessel is a foreign port listed in § 4.75(c), the carrier must transmit complete manifest information before vessel departure. Time requirements for transmission of complete manifest information for carriers destined to Puerto Rico and U.S. possessions are the same as the requirement for the submission of the complete manifest as found in § 4.84.

(d) All penalties and liquidated damages that apply to the submission of paper manifests (*see,* applicable provisions in part 4 of this chapter) apply to the electronic submission of outbound vessel manifest information through the Sea Carrier's Module.

PART 101—GENERAL PROVISIONS

1. The general authority citation for part 101 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

* * * * *

2. In § 101.1, add, in appropriate alphabetical order, the definition of ''business day'':

§ 101.1 Definitions.

* * * * *

Business day. A ''business day'' means a weekday (Monday through Friday), excluding national holidays as specified in § 101.6(a) of this part.

* * * * *

PART 192—EXPORT CONTROL

1. The authority citation for part 192 is revised to read as follows:

Authority: 19 U.S.C. 66, 1624, 1646c.

Subpart A also issued under 19 U.S.C. 1627a, 1646a;

Subpart B also issued under 13 U.S.C. 303; 46 U.S.C. App. 91.

2. In § 192.0, a third sentence is added to read as follows:

§ 192.0 Scope.

* * * This part also makes provision for the Automated Export System (AES), implemented by the Census Regulations at Subpart E (15 CFR Subpart E), and provides the grounds under which Customs, as one of the reviewing agencies of the government's export partnership, may deny an application for post-departure filing status or revoke a participant's privilege to use such filing option, and provides for the appeal procedures to challenge such action by Customs.

3. A new subpart B, consisting of §§ 192.11 through 192.13, is added to read as follows:

Subpart B—Filing of Export Information Through the Automated Export System (AES)

Sec.
192.11 Description of the AES.
192.12 Criteria for denial of applications requesting AES post-departure (Option 4) filing status; appeal procedures.
192.13 Revocation of participant's AES post-departure (Option 4) filing privileges; appeal procedures.

Subpart B—Filing of Export Information Through the Automated Export System (AES)

§ 192.11 Description of the AES.

AES is a voluntary program that allows all exporters required to report commodity export information (*see,* 15 CFR 30.16) to submit such information electronically, rather than on paper, and sea carriers to report required outbound vessel information electronically (*see,* §§ 4.63, 4.75, and 4.76 of this chapter). Eligibility and application procedures are found at subpart E of part 30 of the Census Regulations (15 CFR subpart E), denominated Electronic Filing Requirements—Exporters. These Census Regulations provide that exporters may choose to submit export information through AES by any one of three electronic filing options available. Only Option 4, the complete post-departure submission of export information, requires prior approval by participating agencies before it can be used by AES participants.

§ 192.12 Criteria for denial of applications requesting AES post-departure (Option 4) filing status; appeal procedure.

(a) *Approval process.* Applications for the option of filing export commodity information electronically through AES after the vessel has departed (Option 4 filing status) must be unanimously approved by Customs, Census and other participating government agencies. Disapproval by one of the participating agencies will cause rejection of the application.

(b) *Grounds for Denial.* Customs may deny a participant's application for any of the following reasons:

(1) The applicant is not an exporter, as defined in the Census Regulations (15 CFR 30.7(d));

(2) The applicant has a history of non-compliance with export regulations (*e.g.,* exporter has a history of late electronic submission of commodity records or a record of non-submission of required export documentation);

(3) The applicant has been indicted, convicted, or is currently under an investigation, wherein Customs has developed probable cause, for a felony involving any Customs law or any export law administered by another government agency; or

(4) The applicant has made or caused to be made in the ''Letter of Intent,'' a false or misleading statement or omission with respect to any material fact.

(c) *Notice of denial; appeal procedures.* Applicants will be notified of approval or denial in writing by Census. (Applicants whose applications are denied by other agencies must contact those agencies for their specific appeal procedures.) Applicants whose applications are denied by Customs will be provided with the specific reason(s) for non-selection. Applicants may challenge Customs decision by following the appeal procedure provided at § 192.13(b) of this part.

§ 192.13 Revocation of participants' AES post-departure (Option 4) filing privileges; appeal procedures.

(a) *Reasons for revocation.* Customs may revoke Option 4 privileges of participants for the following reasons:

(1) The exporter has made or caused to be made in the ''Letter of Intent,'' a

false or misleading statement or omission with respect to any material fact;

(2) The exporter submitting the ''Letter of Intent'' is indicted, convicted, or is currently under an investigation, wherein Customs has developed probable cause, for a felony involving any Customs law or any export law administered by another government agency;

(3) The exporter fails to substantially comply with export regulations; or

(4) Continued participation in AES as an Option 4 filer would pose a threat to national security, such that his continued participation in Option 4 should be terminated.

(b) *Notice of revocation; appeal procedures.* When Customs has decided to revoke a participant's Option 4 filing privileges, the participant will be notified in writing of the reason(s) for the decision. The participant may challenge Customs decision by filing an appeal within thirty (30) calendar days of receipt of the notice of decision. Except as stated below, the revocation shall become effective when the participant has either exhausted all appeal proceedings or thirty (30) calendar days after receipt of the notice of revocation if no appeal is filed. However, in cases of intentional violations of any Customs law on the part of the program participant or when required by the national security, revocations will become effective immediately upon notification. Appeals should be addressed to the National Outbound Process Owner, U.S. Customs, Ronald Reagan Building, 1300 Pennsylvania Ave, NW, Room 5.4c, Washington D.C. 20229. Customs will issue a written decision or notice of extension to the participant within thirty (30) calendar days of receipt of the appeal. If a notice of extension is forwarded, the applicant will be provided with the reason(s) for extension of this time period and an expected date of decision. Participants who have had their Option 4 filing privileges revoked and applicants not selected to participate in AES, may not reapply for this filing status for one year following written notification of rejection or revocation.

Raymond W. Kelly,

Commissioner of Customs.

Approved: December 9, 1998.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 99–3306 Filed 2–11–99; 8:45 am]

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federal register

Friday
February 12, 1999

Part IX

Department of Education

Even Start Family Literacy Program for Federally Recognized Indian Tribes and Tribal Organizations; Inviting Applications for New Awards Using Fiscal Year (FY) 1999 Funds; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.258]

Even Start Family Literacy Program for Federally Recognized Indian Tribes and Tribal Organizations; Inviting Applications for New Awards Using Fiscal Year (FY) 1999 Funds

AGENCY: Department of Education.

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: The Even Start Family Literacy Program for Indian tribes and tribal organizations is designed to help break the cycle of poverty and illiteracy by improving the educational opportunities of low-income families by integrating early childhood education, adult literacy or adult basic education, and parenting education into a unified family literacy program for federally recognized Indian tribes and tribal organizations.

Eligible Applicants: Federally recognized Indian tribes and tribal organizations.

Deadline for Transmittal of Applications: March 30, 1999.

Available Funds: The Department estimates that there will be sufficient FY 1999 funds for three new projects after funding continuation awards in FY 1999.

Estimated Range of Awards: $100,000—$250,000.

Estimated Average Size of Awards: $175,000.

Estimated Number of Awards: 3.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 75 (Direct Grant Programs).

(2) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(4) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(5) 34 CFR Part 82 (New Restrictions on Lobbying).

(6) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

Description of Program: Under the authority of section 1202(a)(1)(C) of the Elementary and Secondary Education Act (ESEA), the Assistant Secretary of Elementary and Secondary Education (Assistant Secretary) awards grants to eligible applicants for projects that—

(1) Improve the educational opportunities of low-income families by integrating early childhood education, adult literacy or adult basic education, and parenting education into a unified family literacy program for federally recognized Indian tribe and tribal organization projects;

(2) Are implemented through cooperative activities that build on existing community resources to create a new range of services for federally recognized Indian tribe and tribal organization projects;

(3) Promote achievement of the National Education Goals one, three, five, and eight that address school readiness, student achievement, and parent involvement in the education of their children; and

(4) Assist children and adults to achieve to challenging State content standards and challenging State student performance standards.

Eligible participants. Eligible participants are children and their parents who also meet the following conditions specified in section 1206(a) of the ESEA:

(1) The parent or parents must be eligible for participation in adult education and literacy activities under the Adult Education and Family Literacy Act; or

(2) For a parent or parents within the State's compulsory school attendance age range, a local educational agency must provide (or ensure the availability of) the basic education component; and

(3) The child or children must be younger than eight years of age.

(**Note:** Family members of eligible participants described in paragraphs one through three, above, also may participate in Even Start Family Literacy Program activities when appropriate to serve Even Start purposes. In addition, section 1206(b) of the ESEA generally permits families to remain eligible for Even Start Family Literacy services until all family members become ineligible for participation. For example, in the case of a family in which the parent or parents have become ineligible due to educational advancement, eligibility would continue until all children in the family reach age eight. If all children in a family have reached the age of eight, the family continues to be eligible for two more years, or until the parents no longer are eligible for adult education and literacy activities under the Adult Education and Family Literacy Act, whichever occurs earlier.)

Budget period. Under 34 CFR 75.112 and 75.117, an eligible applicant must propose a project period of up to four years and provide budgetary information for each year of that proposed project period in its initial application. The budgetary information provided should include, for each year, an amount for all key project components with an accompanying breakdown of any subcomponents. A written justification for all requested amounts should be provided.

An applicant is also required under 34 CFR § 75.112(b) to describe how and when, in each budget period of the project, it plans to meet each objective of the project.

(**Note:** This information will be used by the Assistant Secretary, in conjunction with the grantee's annual performance report required under 34 CFR 75.118(a), to determine whether to make a continuation award for the subsequent budget year. Under 34 CFR 75.253 a grantee can receive a continuation award only if it demonstrates that it either has made substantial progress toward meeting the objectives of the approved project, or has received the Assistant Secretary's approval of changes in the project to enable it to meet the objectives in the succeeding budget periods.)

Federal and local funding. An Even Start Family Literacy project's funding is comprised of both a Federal portion of funds (Federal share) and a portion contributed by the eligible applicant (local project share). The local share of the project may be provided in cash or in kind and may be obtained from any source, including other Federal programs. The Federal share of the project may not exceed—

- 90 percent of the total cost of the project in the first year;
- 80 percent in the second year;
- 70 percent in the third year;
- 60 percent in the fourth year; and
- 50 percent in any subsequent year.

The Federal share for any grantee receiving a grant for a second grant cycle may not exceed 50 percent. Any grantee that wishes to reapply for a second grant cycle at the end of its first project period (up to 48 months) must recompete for funding with new applicants.

Indirect costs. Even Start Family Literacy Program funds generally may not be used for the indirect costs of a project. Recipients of an Even Start Indian tribe and tribal organization grant may request the Secretary to waive this requirement. To obtain a waiver, however, the recipient must demonstrate to the Secretary's satisfaction that the recipient otherwise would not be able to participate in the Even Start Family Literacy Program.

National Evaluation: The Department is conducting a national evaluation of Even Start Family Literacy projects. Grantees are required to participate in the Department's national evaluation and to conduct a separate, annual independent local evaluation consistent with the grantee's responsibilities under 34 CFR 75.590 and section 1205(10) of the ESEA.

The Secretary suggests that each applicant budget $10,000 for evaluation activities. These funds will be used for expenditures related to the project's independent local evaluation and for collection and aggregation of data required for the Department's national evaluation. The Secretary also recommends that projects budget for the cost of travel to Washington, DC, and two nights' lodging for the project director and the project evaluator, for their participation in annual evaluation meetings.

Selection Criteria

The Secretary uses the following selection criteria to evaluate applications for grants under this competition.

(1) The maximum composite score for all of these criteria is 100 points.

(2) The maximum score for each criterion is indicated in parentheses.

(a) *Meeting the purposes of the authorizing statute.* (10 points). The Secretary considers how well the project will meet the purpose of the Even Start Family Literacy Program for federally recognized Indian tribes and tribal organizations, which under sections 1201 and 1202(a)(1)(C) of the ESEA is to help break the cycle of poverty and illiteracy by awarding grants for projects that—

- Improve the educational opportunities of low-income families by integrating early childhood education, adult literacy or adult basic education, and parenting education into a unified family literacy program for federally recognized Indian tribe and tribal organization projects;
- Are implemented through cooperative projects that build on existing community resources to create a new range of services for Indian tribe and tribal organization projects;
- Promote achievement of the National Education Goals; and
- Assist children and adults from low-income families to achieve to challenging State content standards and challenging State student performance standards.

(b) *Need for project.* (15 points). The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the following factors:

(i) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(ii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(**Note:** The Secretary invites applicants to address such factors as the following: the number of families in the area who need Even Start services, the lack of availability of comprehensive family literacy services for that population, other resources that will be used to benefit project participants, and any other factors that the applicant considers relevant to the extent of need for the project.)

(c) *Significance.* (10 points). The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies.

(ii) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.

(iii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project.

(d) *Quality of the project design.* (15 points). The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the design of the proposed project includes a thorough, high-quality review of the relevant literature, a high-quality plan for project implementation, and the use of appropriate methodological tools to ensure successful achievement of project objectives.

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(iii) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(**Note:** Concerning design of the project, an eligible applicant must propose a project that incorporates, at a minimum, the following program elements required by section 1205 of the ESEA:

(A) Identification and recruitment of families most in need of services provided under the Even Start Family Literacy Program, as indicated by a low level of income, a low level of adult literacy or English language proficiency of the eligible parent or parents, and other need-related indicators.

(B) Screening and preparation of parents, including teenage parents and children, to enable those parents to participate fully in the activities and services provided under the Even Start Family Literacy Program, including testing, referral to necessary counseling, other developmental and support services, and related services.

(C) Design that accommodates the participants' work schedule and other responsibilities, including the provision of support services, when those services are unavailable from other sources, but are necessary for participation in the activities assisted under the Even Start Family Literacy Program, such as—

- Scheduling and location of services to allow joint participation by parents and children;
- Child care for the period that parents are involved in the project; and
- Transportation to enable parents and their children to participate in the project.

(D) High-quality, intensive instructional programs that promote adult literacy and empower parents to support the educational growth of their children, developmentally appropriate early childhood educational services, and preparation of children for success in regular school programs.

(E) Special training of staff, including child care staff, to develop the skills necessary to work with parents and young children in the full range of instructional services offered through the Even Start Family Literacy Program.

(F) Providing and monitoring of integrated instructional services to participating parents and children through home-based programs.

(G) Operation on a year-round basis, including the provision of some program services, instructional or enrichment, during the summer months.

(H) Coordination with—

- Programs assisted under other parts of Title I and other programs under the ESEA;
- Any relevant programs under the Adult Education and Family Literacy Act, the Individuals with Disabilities Education Act, and the Job Training Partnership Act; and
- The Head Start program, volunteer literacy programs, and other relevant programs.

(I) Ensuring that the proposed project will serve those families most in need of the activities and services provided by the Even Start Family Literacy Program.

(J) An independent evaluation of the project.)

(e) *Quality of project services.* (20 points). The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project, the Secretary

considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

(i) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards.

(ii) The likely impact of the services to be provided by the proposed project on the intended recipients of those services.

(**Note:** An eligible applicant must propose a project that has ''high-quality, intensive instructional programs'' in the three core instructional areas (early childhood education, adult education and parenting education), as required by section 1205(4) of the ESEA. Concerning the quality of project services, the Secretary invites applicants to describe the level of intensity in these three core instructional services that the applicant believes sufficient to produce positive and sustainable outcomes for families, and how the project will provide that level of intensity of services.)

(f) *Quality of project personnel.* (5 points). The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of key project personnel.

(ii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(g) *Adequacy of resources.* (5 points.) The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(**Note:** Applicants may address this criteria in any way that is reasonable. An eligible applicant must provide an increasing local project share over the grant period (at least the following amounts: 10% in the first year, 20% in the second year, 30% in the third year, and 40% in the fourth year), as required by section 1204(b) of the ESEA. In addressing adequacy of resources, the Secretary invites applicants to describe the resources that they will use to increase the amount of the local project's share over the four years of the grant, which will contribute to the applicant's ability to sustain the project at the end of the Federal funding.)

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(iii) The potential for the incorporation of project purposes, activities, or benefits into the ongoing program of the agency or organization at the end of Federal funding.

(h) *Quality of the management plan.* (10 points). The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(iii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(iv) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(i) *Quality of project evaluation.* (10 points). The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(ii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: Laura Chow (CFDA #84.258), Compensatory Education Programs, Room 3633, Regional Office Building #3, 7th and D Streets, SW, Washington, DC 20202–4725 or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: Laura Chow (CFDA #84.258), Compensatory Education Programs, Room 3633, Regional Office Building #3, 7th and D Streets, SW, Washington, DC 20202–4725.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this notice contains the following forms and instructions, plus a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act, and various assurances and certifications.

a. Instructions for the Application Narrative.

b. Estimated Public Reporting Burden Statement.

c. Notice to all Applicants.

d. Objectives and Performance Indicators for the Even Start Family Literacy Program.

e. Application for Federal Assistance (ED 424 (OMB No. 1875–0106, Expires 6/30/01)) and instructions.

f. Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

g. Assurances—Non-Construction Programs (Standard Form 424).

h. Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

i. Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (NOTE: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

j. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. This document has been marked to reflect statutory changes. See the notice published in the **Federal Register** (61 FR 1413) by the Office of Management and Budget on January 19, 1996.

An applicant may submit information on photostatic copies of the application, budget forms, assurances, and certifications. However, the application form, assurances, and certifications must each have an original signature. No grant may be awarded unless a completed application form, including the signed assurances and certifications, have been received.

FOR FURTHER INFORMATION CONTACT: Laura Chow, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW (FOB 6, 3W208), Washington, DC 20202–6132. Telephone (202) 260–2683. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G–Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Program authority: 20 U.S.C. section 6362(a)(1)(C).

Gerald N. Tirozzi,

Assistant Secretary for Elementary and Secondary Education.

Instructions for Part III: Application Narrative

Before preparing the Application Narrative an applicant should read carefully the description of the program and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with a one-page Abstract summarizing the proposed project;

2. Describe the proposed project in light of the selection criteria in the order in which the criteria are listed in this application package; and

3. Provide the following in response to the attached ''Notice to all Applicants'': (1) a reference to the portion of the application in which information appears as to how the applicant is addressing steps to promote equitable access and participation, or (2) a separate statement that contains that information.

4. Provide a copy of the signed set of assurances specified in section 14306(a) of the ESEA (20 USC 8856(a)) that the applicant has filed with its SEA and that is applicable to this grant application.

5. Include any other pertinent information that might assist the Secretary in reviewing the application.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 20 double-spaced, typed pages (on one side only). The Department has found that successful applications for similar programs generally meet this page limit.

Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is 1810–0540 (Expiration Date: 3/31/1999). The time required to complete this information collection is estimated to average 15 hours per response, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202–4651.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Patricia McKee, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW (FOB 6, Area 3 West), Washington D.C. 20202–6132.

Notice to All Applicants

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103–382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. All applicants for new awards must include information in their applications to address this new provision in order to receive funding under this program.

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant

proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs.

This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct ''outreach'' efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1801–0004 (Exp. 8/31/2001). The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

Objectives and Performance Indicators for the Even Start Family Literacy Program

For your information, following are objectives and performance indicators for the Even Start Family Literacy Program (Part B of Title I of the ESEA) that the Department has developed in accordance with the Government Performance and Results Act.

Objective 1. The literacy of participating families will improve.

1.1 *Adult literacy achievement.* By fall 2001, 40 percent of Even Start adults will achieve significant learning gains on measures of math and 30 percent of adults will achieve such gains on measures of reading skills. In 1995–96, 24% of adults achieved a moderate-to large-sized gain between pretest and posttest of math achievement, and 20% on a test of reading achievement.

1.2 *Adult educational attainment.* By fall 2001, 25 percent of adult secondary education (ASE) Even Start participants will obtain their high school diploma or equivalent. In 1995–96, 18% of all ASE/GED participants earned a GED.

1.3 Children's language development and reading readiness. By fall 2001, 60 percent of Even Start children will attain significant gains on measures of language development and reading readiness. In 1995–96, 81% of children made better than expected gains on a test of school readiness, and 50% achieved moderate to large gains on a test of language development.

1.4 Parenting skills. Increasing percentages of parents will show significant improvement on measures of parenting skills, home environment, and expectations for their children. In 1995–96, 41% of parents scored 75% or higher correct on the posttest measuring the quality of cognitive stimulation and emotional support provided to children in the home.

Objective 2. Even Start projects will reach their target population of families that are most in need of services.

2.1 *Recruitment of most in need.* The projects will continue to recruit low-income, disadvantaged families with low literacy levels. In 1996–97, 90% of families had incomes at or substantially below the federal poverty level and 45% of parents had less than a ninth grade education at intake.

Objective 3. Local Even Start projects will provide comprehensive instructional and support services of high quality to all families in a cost-effective manner.

3.1 Service hours. By fall 2001, half of the projects will offer at least 60 hours of adult education per month, at least 20 hours of parenting education per month, and at least 65 hours of early childhood education per month. In 1995–96, half of the projects offered 32 hours or more of adult education per month, 13 hours or more of parenting education per month, and 34 hours or more of early childhood education per month.

3.2 Participation, retention and continuity. Projects will increasingly improve retention and continuity of services. By fall 2001, at least 60 percent of all families will stay in the program for more than one year. Of all families participating in Even Start in 1994–95, 38 percent stayed in the program for more than one year. Of new families entering in 1995–96, 41 percent stayed for more than one year.

Objective 4. The Department of Education will provide effective guidance and technical assistance and will identify and disseminate reliable information on effective approaches.

4.1 *Federal technical assistance.* An increasing percentage of local project directors will be satisfied with technical assistance and guidance.

BILLING CODE X000–01–P

Application for Federal Education Assistance

U.S. Department of Education

Form Approved
OMB No. 1875-0106
Exp. 06/30/2001

Applicant Information

1. Name and Address
   Legal Name: _____
   Address: _____
   City _____ State _____ County _____ ZIP Code _____ - _____

Organizational Unit

2. Applicant's D-U-N-S Number [ ][ ][ ][ ][ ][ ][ ][ ][ ]
3. Catalog of Federal Domestic Assistance #: 8 4 2 5 8 → Title: Even Start Family Literacy Program for Federally Recognized Indian Tribes & Tribal Organizations
4. Project Director: _____
   Address: _____
   City _____ State _____ ZIP Code _____ - _____
   Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____
   E-Mail Address: _____
5. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
   (If "Yes," attach an explanation.)
6. Type of Applicant *(Enter appropriate letter in the box.)* ☐
   - A State
   - B County
   - C Municipal
   - D Township
   - E Interstate
   - F Intermunicipal
   - G Special District
   - H Independent School District
   - I Public College or University
   - J Private, Non-Profit College or University
   - K Indian Tribe
   - L Individual
   - M Private, Profit-Making Organization
   - N Other *(Specify)*: _____
7. Novice Applicant ☐ Yes ☐ No

Application Information

8. Type of Submission:
   - *—PreApplication*
     - ☐ Construction
     - ☐ Non-Construction
   - *—Application*
     - ☐ Construction
     - ☐ Non-Construction
9. Is application subject to review by Executive Order 12372 process?
   Yes *(Date made available to the Executive Order 12372 process for review):* ___/___/_____
   No *(If "No," check appropriate box below.)*
   - ☐ Program is not covered by E.O. 12372.
   - ☐ Program has not been selected by State for review.
10. Proposed Project Dates: Start Date: ___/___/_____ End Date: ___/___/_____
11. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No
    a. If "Yes," Exemption(s) #:
    OR
    b. Assurance of Compliance #:
    c. IRB approval date: _____ ☐ Full IRB or ☐ Expedited Review
12. Descriptive Title of Applicant's Project:

Estimated Funding

13a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

Authorized Representative Information

14. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.
    a. Typed Name of Authorized Representative
    b. Title
    c. Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____
    d. E-Mail Address: _____
    e. Signature of Authorized Representative | Date:

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

4. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

5. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

6. **Type of Applicant.** Enter the appropriate letter in the box provided.

7. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

8. **Type of Submission.** Self-explanatory.

9. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

10. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

11. **Human Subjects.** If research activities involving human subjects are <u>not</u> planned <u>at any time</u> during the proposed project period, check **"No."** The remaining parts of item 11 are then not applicable.

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, <u>are</u> planned <u>at any time</u> during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If the research activities are designated to be exempt under the regulations, enter, in item 11a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"PROTECTION OF HUMAN SUBJECTS IN RESEARCH"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions are appropriate.

    If the planned research activities involving human subjects are covered (not exempt), complete the remaining parts of item 11 and follow the instructions in **"PROTECTION OF HUMAN SUBJECTS IN RESEARCH"** attached to this form. If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 11b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 11c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may review an application through an expedited review procedure only if it complies with Section 97.110 of the human subjects regulations 34 CFR 97. If the IRB review is unavoidably delayed beyond the submission of the application, enter **"Pending"** in item 11c. A follow-up certification of IRB approval from an official signing for the applicant organization must then be sent to and received by the designated ED official. The certification must be received within 30 days of a specific formal request from the designated ED official. The certification must include: the PR Award number, title of the project from item #12, name of the principal investigator, project director, fellow, or other, institution, Multiple Assurance number, date of IRB approval, and appropriate signatures.

    If the applicant organization does not have on file with GPOS or OPRR an approved Assurance of Compliance that covers the proposed research activity, enter **"None"** in item 11b. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days of a specific formal request from the designated ED official.

    For additional instructions regarding proposals that involve human subjects research see, **"PROTECTION OF HUMAN SUBJECTS IN RESEARCH"** attached to this form.

12. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

13. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <u>only</u> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 13.

14. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 14e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH (Attachment to ED 424)

I. Instructions to Applicants if Research Activities Involving Human Subjects are Planned

If you marked item 11 on the application "Yes" and designated exemptions from the human subjects regulations, provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below.

If you marked "Yes" to item 11 on the Face Page, and designated no exemptions from the regulations, address the following six points. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Be sure to provide this information on a separate page(s) entitled "Protection of Human Subjects Attachment."

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Is it a human subject?

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of ***exemptions*** are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.*** [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.

GROUP APPLICATION CERTIFICATION

NOTE: This form must be completed by eligible parties applying as a group for a grant. This form must be accompanied by a group agreement that details the activities that each member of the group plans to perform under the grant.

(34 CFR 75.128(b)-(c)).

To the best of my knowledge and belief, all data in this application are true and correct. I agree to be bound to every statement and assurance made in this application.

Authorized Representative					Name of Institution/ Organization
Typed Name	Title	Signature	Date Signed	Telephone Number (including Area Code)	

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1880--0538

Expiration Date: 10/31/99

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

PARTICIPANT DATA

Note: This form must be completed by applicants under the following programs:

- Teachers and Personnel Grants Program
- Career Ladder Program
- Training for all Teachers Program

Estimated number of anticipated participants in each of the following three categories per year

Preservice Teachers _____

Inservice Teachers _____

Other Type of Educational Personnel _____
(Specify type below)

_____

_____

Degree level (if applicable) _____

Certification Type _____

Languages of Participants _____
(other than English)

Training for all Teachers Program applicants may not necessarily anticipate providing services to participants during the grant period. If this is the case indicate NA in the "anticipated participants" categories above.

PROJECT DOCUMENTATION

Note: Submit the appropriate documents and information as specified below for the following programs.

- Teachers and Personnel Grants Program
- Career Ladder Program
- Training for All Teachers Program

Section A

A copy of the applicant's transmittal letter requesting the appropriate State educational agency to comment on the application.

Section B

If applicable, identify on the line below the Empowerment Zone, Supplemental Zone, or Enterprise Community that the proposed project will serve.
(See the competitive priority and the list of designated Empowerment Zones in previous sections of this application package.)

_____

PROGRAM ASSURANCES

Note: The authorizing statute requires applicants under certain programs to provide assurances. These assurances are specified below under the relevant programs. If your application pertains to any of these programs, this form must be completed.

As the duly authorized representative of the applicant, I certify that the applicant, in regard to the program relevant to this application:

- Teachers and Personnel Grants
- Career Ladder Program
- Training for All Teachers

Will include, if applicable, as part of the project implementing a master's or doctoral-level program, a training practicum in a local school program serving children and youth of limited English proficiency.
(Authority: 20 U.S.C. 7426(g)(3)

Authorized Representative Signature:_____

OMB Approval No. 0348-0040

ASSURANCES- NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management, and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §§874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to

EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official	Title	
Applicant Organization		Date Submitted

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CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c)Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 600 Independence Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APP LICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant,' " person," "primary covered transaction," " principal," proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application b. initial award c. post-award	3. Report Type: ☐ a. initial filing b. material change For Material Change Only: year _____ quarter ____ date of last report
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier ____, *if known:* Congressional District, *if known:*	5. If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime: Congressional District, *if known:*	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*:	
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $	
10. a. Name and Address of Lobbying Entity Registrant *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI):*	
~~11. Amount of Payment *(check all that apply):*~~ ~~$ _____ ☐ actual ☐ planned~~	~~13. Type of Payment *(Check all that apply):*~~ ~~☐ a. retainer~~ ~~☐ b. one-time fee~~ ~~☐ c. commission~~ ~~☐ d. contingent fee~~ ~~☐ e. deferred~~ ~~☐ f. other; specify: _____~~	
~~12. Form of Payment *(check all that apply):*~~ ~~☐ a. cash~~ ~~☐ b. in-kind; specify: nature _____ value _____~~		
~~14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:~~ ~~*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*~~		
~~15. Continuation Sheet(s) SF-LLL attached: ☐ Yes ☐ No~~		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date:	
Federal Use Only	Authorized for Local Reproduction Standard Form - LLL	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. ~~Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate.~~ Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and conract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state, and zip code of the ~~lobbying entity~~ registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

~~11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this a material change report, enter the cumulative amount of payment made or planned to be made.~~

~~12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of in-kind payment.~~

~~13. Check the appropriate box(es). Check all boxes that apply. If other specify nature.~~

~~14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.~~

~~15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.~~

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions

BILLING CODE 4000–01–C

OMB Control No. 1801–0004 (Exp. 8/31/2001)

Notice To All Applicants

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103–382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. ALL APPLICATIONS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs.

This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statues, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in it application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct ''outreach'' efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperative in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

BILLING CODE 4000–01–P

General Education Provisions Act (GEPA) Requirement

Applicants should use this section to address the GEPA provision.

BILLING CODE 4000–01–C

Executive Order—Intergovernmental Review

The Education Department General Administrative Regulations (EDGAR), 34 CFR 79, pertaining to intergovernmental review of Federal programs, apply to the program included in this application package.

Immediately upon receipt of this notice, all applicants, other than federally recognized Indian Tribal Governments, must contact the appropriate State Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform in more than one State should contact, immediately upon receipt of this notice, the Single Points of Contact for each State and follow the procedures established in those States under the Executive Order. A list containing the Single Point of Contact for each State is included in the application package for this program.

In States that have not established a process or chosen a program for review, State, area wide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments by a State Point of Contact and any comments from State, area wide, regional, and local entities must be mailed or hand-delivered by the date in the Program announcement for Intergovernmental Review to the following address: The Secretary, E.O. 12372–CFDA #84.200, U.S. Department of Education, FB–10, Room 6213, 600 Independence Avenue, SW, Washington, DC 20202.

In those States that require review for this program, applications are to be submitted simultaneously to the State Review Process and the U.S. Department of Education.

Proof of mailing will be determined on the same basis as applications.

Please note that the above address is not the same address as the one to which the applicant submits its completed application.

Do not send applications to the above address.

State Single Points of Contact

Arizona
Ms. Janice Dunn, Arizona State Clearinghouse, 3800 North Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone: (602) 280–1315

Arkansas
Ms. Tracie L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Service, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone: (501) 682–1074

California
Mr. Glenn Staber, Grants Coordinator, Office of Planning & Research, 1400 Tenth Street, Sacramento, California 95814, Telephone: (916) 323–7480

Colorado
State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone: (303) 866–2156.

Connecticut
Mr. Willliam T. Quigg, Intergovernmental Review Coordinator, State Single Point of Contact, Office of Policy and Management, Intergovernmental Policy Division, 80 Washington Street, Hartford, Connecticut 06106–4459, Telephone: (203) 566–3410

Delaware
Ms. Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone: (302) 739–3326

District of Columbia
Mr. Rodney T. Hallman, State Single Point of Contact, Office of Grants Management & Development, 717 14th St. N.W., Suite 500, Washington, DC 20005, Telephone: (202) 727–6551

Florida
Florida State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive Office of the Governor, Office of Planning & Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone: (904) 488–8114

Georgia
Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, S.W., Room 534A, Atlanta, Georgia 30334, Telephone: (404) 656–3855

Illinois
Mr. Steve Klokkenga, State Single Point of Contact, Office of the Governor, State of Illinois, 107 Stratton Building, Springfield, Illinois 62706, Telephone: (217) 782–1671

Indiana
Ms. Jean S. Blackwell, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone: (317) 232–5610

Iowa
Mr. Steven R. McCann, Division for Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone: (515) 281–3725

Kentucky
Mr. Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601, Telephone: (502) 564–2382

Maine
State Single Point of Contact, Attn: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone: (207) 289–3261

Maryland
Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201, Telephone: (301) 225–4490

Massachusetts
Ms. Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone: (617) 727–7001

Michigan
Richard S. Pastula, Director, Michigan Department of Commerce, Office of Federal Grants, P.O. Box 30225, Lansing, Michigan 48909, Telephone: (517) 373–7356

Mississippi
Ms. Cathy Mallette, Clearinghouse Officer, Office of Federal Grant, Management and Reporting, Department of Finance and Administration, 301 West Pearl Street, Jackson, Mississippi 39203, Telephone: (601) 949–2174

Missouri
Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone: (314) 751–4834

Nevada
Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Attn: Ron Sparks, Clearinghouse Coordinator, Telephone: (702) 687–4065

New Hampshire
Mr. Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2 ½ Beacon Street, Concord, New Hampshire 03301, Telephone: (603) 271–2155

New Jersey
Gregory W. Adkins, Acting Director, Division of Community Resources, New Jersey Department of Community Affairs. Please direct all correspondence and questions about intergovernmental review to: Andrew Jaskolka, State Review Process, Division of Community Resources, CN 814, Room 609, Trenton, New Jersey 08625–0814, Telephone: (609) 292–9025

New Mexico
Mr. George Elliott, Deputy Director, State Budget Division, Rm. 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone: (505) 827–3640

New York
New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone: (518) 474–1605

North Carolina
Mrs. Chrys Baggett, Director, Office of the Secretary of Admin., N.C. State Clearinghouse, 116 West Jones Street, Raleigh, N. Carolina 27603–8003, Telephone: (919) 733–7232

North Dakota
North Dakota State Single Point of Contact, Office of Intergovernmental Assistance, Office of Management & Budget, 600 East Boulevard Avenue, Bismarck, N. Dakota 58505–0170, Telephone: (701) 224–2094

Ohio
Mr. Larry Weaver, State Single Point of Contact, State/Federal Funds

Coordinator, State Clearinghouse, Office of Budget & Management, 30 East Broad Street, 34th Floor, Columbus, OH 43266–0411, Telephone: (614) 466–0698

Rhode Island

Mr. Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone: (401) 277–2656. Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

South Carolina

Ms. Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, Room 477, 1205 Pendleton Street, Columbia, South Carolina 29201, Telephone: (803) 734–0494

South Dakota

Ms. Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone: (605) 773–3212

Tennessee

Mr. Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone: (615) 741–1676

Texas

Mr. Tom Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone: (512) 463–1778

Utah

Utah State Clearinghouse, Office of Planning and Budget, Attn: Ms. Carolyn Wright, Room 116, State Capitol, Salt Lake City, Utah 84114, Telephone: (801) 538–1535

Vermont

Mr. Bernard D. Johnson, Assistant Director, Office of Policy Research and Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone: (802) 828–3326

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, Room 553 Charleston, West Virginia 2305, Telephone: (304) 348–4010

Wisconsin

Mr. William C. Carey, Section Chief, Federal/State Relations Office, Wisconsin Department of Administration, 101 South Webster Street, P.O. Box 7864, Madison, Wisconsin 53707, Telephone: (608) 266–0267

Wyoming

Ms. Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone: (307)–777–7574

Territories

Guam

Mr. Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone: (671) 472–2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Norma Burgops/Jose E. Caro, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Telephone: (809) 727–4444

Virgin Islands

Mr. Jose George, Director, Office of Management & Budget, #41 Norregade Emancipation Garden Station, Second Floor, St. Thomas, Virgin Islands 00802. Please direct correspondence to: Linda Clark Telephone: (809) 774–0750.

In accordance with Executive Order #12372, ''Intergovernmental Review Process,'' this listing represents the designated State Single Points of Contact. Upon request, a background document explaining the Executive Order is available. The Office of Management and Budget point of contact for updating this listing is: Donna Rivelli (202) 395–5090. The States not listed no longer participate in the process. These include, Alabama; Alaska; Kansas; Hawaii; Idaho; Louisiana; Minnesota; Montana; Nebraska; Oklahoma; Oregon; Pennsylvania; Virginia; and Washington. This list is based on the most current information provided by the States. Information on any changes or apparent errors should be provided to the Office of Management and Budget and the State in question. Changes to the list will be made only upon formal notification by the State.

[FR Doc. 99–3341 Filed 2–11–99; 8:45 am]

BILLING CODE 4000–01–M

federal register

Friday
February 12, 1999

Part X

Environmental Protection Agency

40 CFR Parts 51, 60, 61, and 63

Clean Air Act: Recordkeeping and Reporting Burden Reduction; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 60, 61, and 63

[AD–FRL–6300–4]

Recordkeeping and Reporting Burden Reduction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final amendments.

SUMMARY: On September 11, 1996, the EPA proposed changes to reduce unnecessary reporting and recordkeeping burdens due to regulations implementing the Clean Air Act (the Act). This review was part of a Government-wide initiative as directed by the President on March 1, 1995. With today's document, the EPA is finalizing the proposed changes, with minor amendments as discussed below. On the whole, public comments that were received on the proposed changes were overwhelmingly supportive of the Agency's efforts.

DATES: *Effective Date.* April 13, 1999.

Judicial Review. Under Section 307(b)(1) of the Act, judicial review is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under Section 307(b)(2) of the Act, the requirements that are the subject of today's document may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

ADDRESSES: *Docket.* Docket No. A–95–50, containing supporting information used in developing the final amendments to the standards, is available for public inspection and copying from 8:00 a.m. to 5:30 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center (6102), 401 M Street, SW, Washington, D.C. 20460; telephone (202) 260–7548. Both the public comment letters and a detailed summary of the comments and the EPA's responses to them are included in the docket. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning the standards or technical aspects, contact Mr. David W. Markwordt, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone (919) 541–0837.

SUPPLEMENTARY INFORMATION:

An electronic version of this rule is available for download from the EPA Technology Transfer Network (TTN) at ''http://www.epa.gov/ttn/oarpg/ramain.html''. For assistance in downloading files, call the TTN Help line at (919) 541–5384.

I. Significant Public Comments and Responses

Fourteen letters on the proposed revisions were received. Of these, four were from State agencies and ten were from industry commenters. A detailed discussion of all the comments and the EPA's responses can be found in the comment summary and response document, which is referenced in the **ADDRESSES** section of this preamble. This summary of comments and responses serves as the basis for the revisions that have been made to the standards between proposal and promulgation. Most of the comment letters contained multiple comments.

The comments addressed the General Provisions for 40 CFR parts 60, 61, and 63; NSPS for Steam Generators (40 CFR part 60 subparts D, Da, Db, and Dc); NSPS for Municipal Waste Combustors (40 CFR 60 subpart Ea); Emission Reporting Requirements for 40 CFR part 51; NSPS for New Residential Wood Heaters (40 CFR part 60 subpart AAA); and additional burden reduction. These comments and the EPA's responses are summarized below.

A. General Provisions for 40 CFR Parts 60, 61, and 63

The EPA's proposals concerning reducing the record keeping and reporting burden in the General Provisions were generally supported. Nine commenters strongly supported the EPA's commitment to reducing record keeping and reporting burdens. Three commenters also supported the EPA's proposal to allow electronic data submission, and made detailed suggestions concerning implementation of electronic reporting. The EPA's proposal to eliminate the notification of the anticipated date of initial startup was also supported by four commenters. Five commenters supported the EPA's proposal to require only a 7-day notice prior to rescheduling a performance test. However, sources in this situation should notify their delegated State agency (or EPA Region if there is no delegated State agency) as soon as possible, when they have a need to use this provision. There were no negative comments on the EPA's proposals concerning electronic data submission, eliminating notification of anticipated initial startup date, and requiring only a 7-day prior notice for rescheduling a performance test.

This document corrects a typographical error in the proposal notice (61 FR 47852). The EPA's intent was to delete the paragraph requiring notification of the anticipated date of startup for new affected facilities. Section 63.9(b)(2)(iv) was erroneously cited. The correct citation is section 63.9(b)(4)(iv).

1. Quarterly or Semi-Annual Reporting

Three commenters supported the proposed change to semi-annual excess emissions reporting, arguing that semi-annual reporting would be sufficient to ensure compliance and would reduce regulatory costs and burden. One of the commenters contended that State and local regulations would also need to be revised to semi-annual reporting to realize the cost savings. However, one commenter supported retaining the requirement for quarterly reporting, stating that a reduction of reporting frequency would result in an inability for State and local agencies to identify and respond to violations in a timely manner, and delay the resolution of enforcement actions. The commenter requested that the EPA add language to § 60.7(c), and any other applicable sections, specifying that semi-annual reporting would not apply when more frequent reporting is specifically required by a State or local agency. Two commenters supported retaining the quarterly reporting requirement only for continuous emissions monitoring (CEMs) and continuous opacity monitors (COMs), as such a requirement would allow response to emission problems in a timely manner.

The EPA recognizes that some State and local agencies audit quarterly. States are not precluded from adopting more stringent requirements than the Federal regulations and are free to maintain quarterly reporting requirements for CEMs and COMs data. The semi-annual reporting requirements comport with those under the part 70 and part 71 title V operating permit program regulations, which require monitoring, record keeping, and reporting sufficient to demonstrate compliance with applicable requirements under the Clean Air Act (Act).

One of the commenters noted that § 63.10(e)(3) already allows semi-annual reporting, but that the requirement is too restrictive. The commenter suggested that plants triggering quarterly reporting because of excess emissions only be subject to a 6-month period of quarterly reporting. If the 6 months expire with no further exceedances, the reporting schedule would automatically revert to semi-

annual reporting. While the commenter is correct that § 63.10(e)(3) allows semi-annual reporting, paragraph (e)(3)(i)(C) modifies the requirement in the case where a source experiences excessive emissions. As explained in the proposal notice (61 FR 47844), the EPA's experience over the past ten years with a variety of NSPS and NESHAP rulemakings covering industries of all types suggests that semi-annual reporting provides sufficiently timely information to both ensure compliance and enable adequate enforcement of applicable requirements, while imposing less burden on the affected industry than would quarterly reporting. Therefore, the EPA will finalize its proposal to remove § 63.10(e)(3)(i)(C), which results in a reduction of the burden for those sources who would have otherwise been affected by its requirements.

2. Reduction in Retention of Sub-Hourly Data for CEMs

In today's amendments, the EPA is finalizing the proposed changes to allow owners or operators the option to reduce record keeping requirements of sub-hourly data recorded by CEMs. Six commenters provided specific comments pertaining to these amendments (IV–D–01, IV–D–02, IV–D–04, IV–D–08, IV–D–07, IV–D–10).

Two commenters (IV–D–07, IV–D–10) supported the revisions that allow for the reduced data record keeping from 15-minute to hourly interval.

Two other commenters (IV–D–02, IV–D–04) stated that the proposal would eliminate the regulatory authority's ability to determine if the hourly averages reflect the actual data readings. Additionally, one commenter (IV–D–02) requested EPA to revise the language concerning data availability to state that the 15-minute readings could be discarded except where a State or local agency requires retention of such data.

Two commenters (IV–D–01, IV–01–08) opposed the EPA's proposal on the grounds that it adds a record keeping requirement, maintaining that the current regulations do not require retention of the 15-minute data averages. One (IV–D–01) further commented that CEMs do not typically save sub-hourly measurements, and that the revision would conflict with requirements in 40 CFR part 75. These commenters (IV–D–01, IV–01–08) were also concerned that the revision would create an additional cost burden by requiring expansion of data acquisition capabilities.

The EPA has revised the proposed amendments to address compliance concerns raised by State agencies. In addition, the EPA believes that it is necessary to point out that these amendments provide an option to the owners or operator, and the requirement is not mandatory. For sources with CEMs that decide to comply with the record retention requirements as amended in today's rulemaking, the owner and operator maintains the burden of proof for hourly averages that the source claims is invalid. The owner or operator may not later assert that the hourly averages were based on invalid data, if the source did not previously identify the hour as including periods of monitor system breakdown, repair, calibration checks, and zero and span adjustments.

With respect to the amendments, the EPA no longer requires that a source achieve 95% data availability in order to discard the sub-hourly measurements. The EPA decided to eliminate the data availability requirement based on the fact that the general provisions define a priority data availability of 100%, unless allowed otherwise within individual rules. Further, a demonstration of compliance with the 95% data availability threshold would require additional record keeping, running counter to the goal of burden reduction.

The agency has restructured the final amendments to distinguish between automated and manual CEMs. This is because both systems have different ways (e.g., computerized versus manual) to reduce the data to the final form of the standard. The requirements provide record keeping reductions for both automated and manual CEMs, but differ in the record retention requirements depending on the type of CEMs. The basis for the difference is to allow an inspector to determine if the sub-hourly data is being properly reduced in both instances. In cases where the data reduction is automated, it is expected that data reduction procedures would not vary; hence, the Agency is only requiring the retention of sub-hourly measurements from the most recent three averaging periods, so as to allow a replicable check of the data reduction calculations. Where data is manually reduced, there is greater potential for variation between data reduction calculations; hence, it needs to be possible to confirm the accuracy of the periodic reports.

The agency has added language that requires the hourly averages include periods of CEMs malfunction or breakdown, for sources wishing to delete the sub-hourly data. This restriction is necessary to ensure that data which indicates potential emission violations are not both excluded from the hourly average and then destroyed due to mis-classification as a CEMs breakdown or malfunction. Since § 60.13(h) allows sources to exclude data from the hourly average which was collected during periods of monitor malfunction, § 60.13(h) has also been amended to reference the new provision at § 60.7(f) which allows for disposal of raw data in limited circumstances.

Finally a paragraph has been added to the final amendments to allow the Administrator or a delegated authority, such as the State or local agency, the ability to require an owner or operator to maintain all sub-hourly data, if the Administrator finds the data necessary to more accurately assess compliance.

As discussed above, two commenters (IV–D–01, IV–01–08) asserted that the current regulations do not require the retention of 15-minute data averages. EPA disagrees with this these commenters. In fact, § 63.10(b)(2)(vii) requires retention of all ''required measurements needed to achieve compliance with a relevant standard (including, but not limited to 15-minute averages of CMS data . . .),'' which is consistent with the monitoring requirements laid out in § 63.8. Similarly, § 60.7(f) requires retention of all continuous monitoring system device measurements, which builds from the requirement in § 60.13(e)(2) to measure and record data for each successive 15-minute period.

B. 40 CFR Part 60, Subparts D, Da, Db, and Dc

Several commenters supported the EPA's proposal to reduce reporting frequency for part 60 subparts D, Da, Db, and Dc boilers from quarterly to semi-annual. The EPA will implement the proposed changes with this document. In addition, the EPA has made other minor changes to related language in these subparts to clarify the semi-annual reporting requirements.

One commenter further suggested that the EPA accept the semi-annual reporting requirement for steam generators that are subject to part 75 (the acid rain program). This commenter explained that many units subject to subpart D are also subject to part 75, and would not benefit from the proposed revisions unless they were accepted for compliance with part 75 also. One commenter disagreed, preferring that both part 75 and part 60 retain the quarterly reporting requirement. This commenter stated that the quarterly data are used to determine continuous compliance, and the change would not reduce the reporting burden on sources.

One commenter suggested that the EPA could further reduce the regulatory

burden for subpart Dc boilers by eliminating the reporting requirement in §§ 60.48c(f)(1) and 60.48c(e)(11) regarding fuel supplier certification, and allowing record keeping to document compliance. This commenter said that the record keeping provisions in § 60.48c(e)(11) should also be simplified to allow the affected facility to maintain records that the supplier is contractually obligated to provide fuel oil.

Revisions to part 75 are not within the scope of this rulemaking. However, the EPA will consider whether part 75 should be amended to require semi-annual, rather than quarterly, reporting in future rulemakings. States are not precluded from adopting more stringent requirements than the Federal regulations and are free to maintain quarterly reporting requirements for any CEMs or COMs data that may be required under parts 60, 61, and 63. The EPA will also consider the proposal to replace the reporting requirements in §§ 60.48c(f)(1) and 60.48c(e)(11) with record keeping requirements in future rulemakings.

C. 40 CFR Part 60, Subpart Ea

One commenter opposed changing the reporting requirements for municipal waste combustors from quarterly to semi-annual because these sources may potentially be opt-in units subject to the part 75 regulations, which require quarterly reporting. This commenter reasoned that acid rain municipal waste combustors are controversial sources that the public perceives as an environmental problem, and that the change would not reduce the reporting burden.

The Agency recognizes that State and local agencies may elect to be more stringent than the Federal regulations and require quarterly reporting for identified source categories such as municipal waste combustors. However, the EPA does not believe that any changes from the proposed rule are needed, in this case. The EPA has made minor wording changes to the final language to clarify the reporting requirements for affected sources.

D. 40 CFR Part 51, Subpart Q

Two commenters opposed the EPA's proposal to raise the emission reporting threshold from 100 to 200 tons per year (tpy). Both commenters indicated that a higher threshold would not reduce the source reporting burden, as the 100 tpy threshold information would still be required by the States to determine whether other Clean Air Act programs would apply.

The EPA did not propose the change to reduce the amount of information collected by the States. The Agency recognizes that the States gather this information to support their own planning and permitting purposes and do not gather this information in response to this rule. The proposed change focuses on reducing the amount of the information that States transfer to the EPA (and the burden that results from this transfer of information).

One commenter suggested that the EPA should revamp the entire subpart. The commenter identified four ways in which the Agency should revise the regulation: (1) Allow an additional six months for facilities to provide information to the States and for the States to then enter the data into their system for transferral to the Aerometric Information Retrieval System (AIRS); (2) Decrease the reporting of data items; (3) Update the users' manuals and forms for data submittal; and (4) Delete the requirement for HATREMS in § 51.323, as it no longer exists.

In general, the purpose of the proposed change is directed at reducing the burden that results from the States transmitting data to the EPA. The burden on industry to report this data to the States does not result from this rule. States require their industries to report such information for the States' own planning and permitting purposes. The EPA also considered the specific suggestions raised by the commenters. During recent discussions in a joint EPA/State and local work group, State and local representatives (STAPPA/ALAPCO) agreed that a 6-month schedule made sense and was feasible even if extending the time period is contrary to the need for timely emissions data. Second, the rule does not require most of the data items supported by AIRS; however, AIRS includes these data items at the request of State and local agencies to support their own program needs. Reporting additional data items is completely voluntary. Third, the EPA has acknowledged the need for updating § 51.323 as part of the burden reduction exercise and has done so in the final amendments. Finally, the Agency agrees with the need for removing any reference to HATREMS; however, the Agency views moving data reporting to the facility level as inappropriate because of the limited usefulness of such data.

E. 40 CFR Part 60, Subpart AAA

As part of the record keeping and reporting burden reduction initiative, the Agency proposed to revise part 60, subpart AAA—NSPS; New Residential Wood Heaters. The proposed revisions included editorial changes for two provisions of the rule, and deletion of the entire prohibitions section.

Written comments on the proposed changes to the wood heater NSPS were submitted by the Hearth Products Association (HPA), which had no objection to the two proposed editorial changes. However, they did object to changes to the prohibitions section of the rule. The HPA's comments regarding changes to the prohibitions section and the Agency's response to those comments are addressed in a separate **Federal Register** notice (see Docket #A–95–50 IV–E–01 and 02).

After reviewing the comments received, the Agency is proceeding with the editorial changes. These modifications to the rule will make it easier to understand as well as administer; thereby, reducing the resources needed to achieve compliance with the rule. However, the Agency has decided to revise § 60.538, Prohibitions, in a separate **Federal Register** notice (see Docket #A–95–50 IV–E–01 and 02).

F. 40 CFR Part 61, Subpart F

As part of the record keeping and reporting burden reduction initiative, the Agency solicited comment on the concept of removing the requirement for the fixed-point monitoring system and associated record keeping from the vinyl chloride standard.

Written comments explained that area monitoring requirements in the vinyl chloride NESHAP rule should be eliminated because they are duplicative of and less effective than instrumental monitoring; that computerized leak detecting systems or other similar devices would be more effective in identifying major releases; that the Hazardous Organic NESHAP (HON) rule applies to all facilities subject to the vinyl chloride NESHAP and supersedes that rule; and that area monitoring is extremely costly. The commenter requested that the EPA consider replacing the area monitoring program with the use of the Leak Detection and Repair (LDAR) program.

The EPA agrees that a continuous area monitoring program has significant costs, and that the area monitoring program is less effective in detecting leaking equipment than a leak detection and repair program using instrumental monitoring. The EPA disagrees with the comment regarding the Hazardous Organic NESHAP (HON) applying to all facilities subject to the vinyl chloride NESHAP. The HON leak detection and repair program applies to operations which produce ethylene dichloride (EDC) and vinyl chloride monomer (VCM) as primary products, but does not apply to polyvinyl chloride or

copolymers production. And, the HON does not supersede the area monitoring requirements of the vinyl chloride NESHAP. The EPA regards the area monitoring role as distinctly different than that of a leak detection program, although at times the area monitoring is a helpful indicator when leaks exist. The EPA regards continuous area monitoring as the most reliable way to quickly detect major releases from process equipment including but not limited to leaking equipment. The EPA is open to innovative ways to achieve the same result in a less costly way. In recent cases, process related releases have occurred that would have been unnoticed by leak detection and repair procedures, and would have gone undetected for extended periods had it not been for an area monitoring program. These types of releases can be extremely harmful to human health and the environment, and the liability for these releases could be far more costly than the area monitoring requirements. For these reasons the EPA does not intend to make any change to the area monitoring requirements at this time.

G. Additional Burden Reductions

Suggestions for additional burden reduction included: (1) merging the part 60 reporting requirements with the emission inventory requirements to create a single coordinated set of requirements; (2) allowing the title V permitting authority to exempt area sources of hazardous air pollutants (HAP) from the startup, shutdown, and malfunction plan required under § 63.10(d)(5)(i) and (ii); (3) eliminating § 50.145(a)(2), as notifications of otherwise unrelated activities are good candidates for deletion; and (4) Eliminating all routine reports of compliance information under parts 60, 61, and 63 for sources that have title V permits.

One commenter requested that the EPA reduce the vinyl chloride NESHAP reporting requirement from quarterly to semi-annual.

One commenter explained in detail why the incidental wood furniture manufacturing requirements were onerous, and proposed three solutions to remedy the problems with the record keeping requirements of the rule: (1) eliminate the record keeping requirements for incidental wood manufacturers; (2) limit the record keeping requirement to incidental wood furniture manufacturers who make furniture for commercial sale; or (3) replace the record keeping requirements with a one-time certification that the facility does not use more than 100 gallons per month in manufacturing wood furniture. The commenter recommended the second approach, and suggested revisions to the language at § 63.800(a) to implement the change.

The EPA is committed to reducing regulatory burden. The Agency appreciates the positive response to its proposals, and will continue to seek ways to minimize record keeping and reporting requirements in future rulemakings.

II. Administrative Requirements

A. Docket

The docket for this rulemaking is A–95–50. The docket is an organized and complete file of all the information submitted to or otherwise considered by the EPA in the development of this rulemaking. The principle purposes of the docket are: (1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process; and (2) to serve as the record in case of judicial review (except for interagency review materials) (Section 307(d)(7)(A) of the Act). The docket is available for public inspection at the EPA's Air and Radiation Docket and Information Center, the location of which is given in the **ADDRESSES** section of this document.

B. Analysis Under E.O. 12866, the Unfunded Mandates Reform Act of 1995, the Regulatory Flexibility Act, and the Small Business Regulatory Enforcement Fairness Act of 1996

Because the regulatory revisions that are the subject of today's document would reduce the regulatory burden, this action is not a ''significant'' regulatory action within the meaning of Executive Order 12866, and does not impose any Federal mandate on State, local and tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995. Further, the EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this action under the Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act of 1996. The regulatory changes proposed here are expected to reduce regulatory burdens on small businesses, and are not expected to have any adverse effect on small businesses. Therefore, the EPA certifies that this rule will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

The revisions to existing standards are intended to reduce existing record keeping and reporting requirements. In the proposal notice (61 FR 47840), the EPA explained the changes, identified who would be affected by the changes, and estimated the reductions associated with each change. The EPA also requested comment on all aspects of the paperwork burden reductions, including the number of affected entities and estimate of burden reduction. Comments on the proposed rule revisions were generally favorable, and acknowledged the burden reduction that would occur due to the proposed changes. Although there were no quantitative estimates of burden reduction, public comments in particular recognized the burden reduction that would occur as a result of the changes from quarterly to semi-annual reporting and of deleting notification of the anticipated date of initial startup. There were no public comments on the EPA's numerical estimates of burden reduction in the proposal (61 FR 47841). As the result of EPA's analysis of the public comments received on technical aspects of the proposed changes, the EPA is making only minor, insignificant changes to the proposed rule in the promulgated version of the revisions. Therefore, the EPA's original estimate of the record keeping and reporting burden due to the revisions remains unchanged from proposal.

D. National Technology Transfer and Advancement Act

Under Section 12 of the National Technology Transfer and Advancement Act of 1995, the EPA must consider the use of ''voluntary consensus standards,'' if available and applicable, when implementing policies and programs, unless it would be ''inconsistent with applicable law or otherwise impractical.'' The intent of the National Technology Transfer and Advancement Act is to reduce the costs to the private and public sectors by requiring federal agencies to draw upon any existing, suitable technical standards used in commerce or industry.

A ''voluntary consensus standard'' is a technical standard developed or adopted by a legitimate standards-developing organization. The Act defines ''technical standards'' as ''performance-based or design-specific technical specifications and related management systems practices.'' A legitimate standards-developing organization must produce standards by consensus and observe principles of due process, openness, and balance of interests. Examples of organizations that are regarded as legitimate standards-developing organizations include the American Society for Testing and

Materials (ASTM), International Organization for Standardization (ISO), International Electrotechnical Commission (IEC), American Petroleum Institute (API), National Fire Protection Association (NFPA) and Society of Automotive Engineers (SAE).

Since today's action does not involve the establishment or modification of technical standards, the requirements of the National Technology Transfer and Advancement Act do not apply.

E. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that (1) OMB determines is ''economically significant'' as defined under Executive Order 12866, and (2) EPA determines the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety aspects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

These regulatory revisions are not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

F. Executive Order 13084—Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. These rule revisions impose no enforceable duties on these entities. Rather, these rule revisions reduce burdens associated with certain regulatory requirements. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

G. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule changes do not create a mandate on State, local or tribal governments. The rule changes do not impose any enforceable duties on these entities. Rather, the rule changes reduce recordkeeping and reporting burden for certain regulatory requirements. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

H. 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 affect, the agecy promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective April 13, 1999.

Statutory Authority: The statutory authority for this action is provided by Sections 101, 112, 114, 116, and 301 of the Clean Air Act, as amended, 42 U.S.C. 7401, 7412, 7414, 7416, and 7601.

List of Subjects

40 CFR Part 51

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

40 CFR Part 60

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

40 CFR Part 61

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

40 CFR Part 63

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

Dated: February 4, 1999.

Carol M. Browner,

Administrator.

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

PART 51—[AMENDED]

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

Authority: 42 U.S. C. 7401–7671q.

Subpart Q—[Amended]

2. Section 51.322 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 51.322 Sources subject to emissions reporting.

(a) * * *

(1) For particulate matter, PM_{10}, sulfur oxides, VOC and nitrogen oxides, any facility that actually emits a total of 181.4 metric tons (200 tons) per year or more of any one pollutant. For particulate matter emissions, the reporting requirement ends with the

reporting of calendar year 1987 emissions. For PM_{10} emissions, the reporting requirement begins with the reporting of calendar year 1988 emissions.

(2) For carbon monoxide, any facility that actually emits a total of 1814 metric tons (2000 tons) per year or more.

* * * * *

3. Section 51.323 is amended by removing and reserving paragraph (a)(2) and revising paragraphs (a)(1), (a)(3), and (b) to read as follows:

§ 51.323 Reportable emissions data and information.

(a) * * *

(1) Emissions of particulate matter (PM10), sulfur oxides, carbon monoxide, nitrogen oxides, VOC and lead or lead compounds measured as elemental lead as specified by the AIRS Facility Subsystem User's Guide AF2 ''AFS Data Coding'' (EPA–454/B–94–004) point source coding form,

(2) [Reserved].

(3) Emissions of PM 2.5 as will be specified in a future guideline.

(b) Such emissions data and information specified in paragraph (a) of this section must be submitted to the AIRS/AFS database via either online data entry or batch update system.

* * * * *

PART 60—[AMENDED]

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

Authority: 42 U.S.C. 7401–7601.

Subpart A—[Amended]

2. Section 60.7 is amended by removing and reserving paragraph (a)(2) and revising paragraphs (a) introductory text and (c) introductory text, the last sentence of paragraph (f), and adding paragraphs (f)(1), (f)(2), and (f)(3) to read as follows:

§ 60.7 Notification and recordkeeping.

* * * * *

(a) Any owner or operator subject to the provisions of this part shall furnish the Administrator written notification or, if acceptable to both the Administrator and the owner or operator of a source, electronic notification, as follows:

* * * * *

(c) Each owner or operator required to install a continuous monitoring device shall submit excess emissions and monitoring systems performance report (excess emissions are defined in applicable subparts) and-or summary report form (see paragraph (d) of this section) to the Administrator semiannually, except when: more frequent reporting is specifically required by an applicable subpart; or the Administrator, on a case-by-case basis, determines that more frequent reporting is necessary to accurately assess the compliance status of the source. All reports shall be postmarked by the 30th day following the end of each six-month period. Written reports of excess emissions shall include the following information:

* * * * *

(f) * * * The file shall be retained for at least two years following the date of such measurements, maintenance, reports, and records, except as follows;

(1) This paragraph applies to owners or operators required to install a continuous emissions monitoring system (CEMS) where the CEMS installed is automated, and where the calculated data averages do not exclude periods of CEMS breakdown or malfunction. An automated CEMS records and reduces the measured data to the form of the pollutant emission standard through the use of a computerized data acquisition system. In lieu of maintaining a file of all CEMS subhourly measurements as required under paragraph (f) of this section, the owner or operator shall retain the most recent consecutive three averaging periods of subhourly measurements and a file that contains a hard copy of the data acquisition system algorithm used to reduce the measured data into the reportable form of the standard.

(2) This paragraph applies to owners or operators required to install a CEMS where the measured data is manually reduced to obtain the reportable form of the standard, and where the calculated data averages do not exclude periods of CEMS breakdown or malfunction. In lieu of maintaining a file of all CEMS subhourly measurements as required under paragraph (f) of this section, the owner or operator shall retain all subhourly measurements for the most recent reporting period. The subhourly measurements shall be retained for 120 days from the date of the most recent summary or excess emission report submitted to the Administrator.

(3) The Administrator or delegated authority, upon notification to the source, may require the owner or operator to maintain all measurements as required by paragraph (f) of this section, if the Administrator or the delegated authority determines these records are required to more accurately assess the compliance status of the affected source.

* * * * *

3. Section 60.8 is amended by revising paragraph (d) to read as follows:

§ 60.8 Performance tests.

* * * * *

(d) The owner or operator of an affected facility shall provide the Administrator at least 30 days prior notice of any performance test, except as specified under other subparts, to afford the Administrator the opportunity to have an observer present. If after 30 days notice for an initially scheduled performance test, there is a delay (due to operational problems, etc.) in conducting the scheduled performance test, the owner or operator of an affected facility shall notify the Administrator (or delegated State or local agency) as soon as possible of any delay in the original test date, either by providing at least 7 days prior notice of the rescheduled date of the performance test, or by arranging a rescheduled date with the Administrator (or delegated State or local agency) by mutual agreement.

* * * * *

3A. Section 60.13 is amended by revising the fourth sentence in paragraph (h) to read as follows:

§ 60.13 Monitoring requirements.

* * * * *

(h) * * *Data recorded during periods of continuous system breakdown, repair, calibration checks, and zero and span adjustments shall not be included in the data averages computed under this paragraph. For owners and operators complying with the requirements in § 60.7(f) (1) or (2), data averages must include any data recorded during periods of monitor breakdown or malfunction. * * *

* * * * *

4. Section 60.19 is amended by revising paragraph (b) to read as follows:

§ 60.19 General notification and reporting requirements.

* * * * *

(b) For the purposes of this part, if an explicit postmark deadline is not specified in an applicable requirement for the submittal of a notification, application, report, or other written communication to the Administrator, the owner or operator shall postmark the submittal on or before the number of days specified in the applicable requirement. For example, if a notification must be submitted 15 days before a particular event is scheduled to take place, the notification shall be postmarked on or before 15 days preceding the event; likewise, if a notification must be submitted 15 days after a particular event takes place, the

notification shall be delivered or postmarked on or before 15 days following the end of the event. The use of reliable non-Government mail carriers that provide indications of verifiable delivery of information required to be submitted to the Administrator, similar to the postmark provided by the U.S. Postal Service, or alternative means of delivery, including the use of electronic media, agreed to by the permitting authority, is acceptable.

* * * * *

Subpart D—[Amended]

5. Section 60.45 is amended by revising paragraph (g) introductory text to read as follows:

§ 60.45 Emission and fuel monitoring.

* * * * *

(g) Excess emission and monitoring system performance reports shall be submitted to the Administrator semiannually for each six-month period in the calendar year. All semiannual reports shall be postmarked by the 30th day following the end of each six-month period. Each excess emission and MSP report shall include the information required in § 60.7(c). Periods of excess emissions and monitoring systems (MS) downtime that shall be reported are defined as follows:

* * * * *

Subpart Da—[Amended]

6. Section 60.49a is amended by revising paragraph (i) to read as follows:

§ 60.49a Reporting requirements.

* * * * *

(i) The owner or operator of an affected facility shall submit the written reports required under this section and subpart A to the Administrator semiannually for each six-month period. All semiannual reports shall be postmarked by the 30th day following the end of each six-month period.

* * * * *

Subpart Db—[Amended]

7. Section 60.49b is amended by revising paragraphs (d), (e), (h) introductory text, (i), (j), (k)(2), (k)(3), (m) introductory text, (n) introductory text, (n)(1), (n)(2), (q) introductory text, (q)(2), (q)(3), (r), and (s) to read as follows:

§ 60.49b Reporting and recordkeeping requirements.

* * * * *

(d) The owner or operator of an affected facility shall record and maintain records of the amounts of each fuel combusted during each day and calculate the annual capacity factor individually for coal, distillate oil, residual oil, natural gas, wood, and municipal-type solid waste for the reporting period. The annual capacity factor is determined on a 12-month rolling average basis with a new annual capacity factor calculated at the end of each calendar month.

(e) For an affected facility that combusts residual oil and meets the criteria under §§ 60.46b(e)(4), 60.44b (j), or (k), the owner or operator shall maintain records of the nitrogen content of the residual oil combusted in the affected facility and calculate the average fuel nitrogen content for the reporting period. The nitrogen content shall be determined using ASTM Method D3431–80, Test Method for Trace Nitrogen in Liquid Petroleum Hydrocarbons (IBR-see § 60.17), or fuel suppliers. If residual oil blends are being combusted, fuel nitrogen specifications may be prorated based on the ratio of residual oils of different nitrogen content in the fuel blend.

* * * * *

(h) The owner or operator of any affected facility in any category listed in paragraphs (h) (1) or (2) of this section is required to submit excess emission reports for any excess emissions which occurred during the reporting period.

* * * * *

(i) The owner or operator of any affected facility subject to the continuous monitoring requirements for nitrogen oxides under § 60.48(b) shall submit reports containing the information recorded under paragraph (g) of this section.

(j) The owner or operator of any affected facility subject to the sulfur dioxide standards under § 60.42b shall submit reports.

(k) * * *

(2) Each 30-day average sulfur dioxide emission rate (ng/J or 1b/million Btu heat input) measured during the reporting period, ending with the last 30-day period; reasons for noncompliance with the emission standards; and a description of corrective actions taken.

(3) Each 30-day average percent reduction in sulfur dioxide emissions calculated during the reporting period, ending with the last 30-day period; reasons for noncompliance with the emission standards; and a description of corrective actions taken.

* * * * *

(m) For each affected facility subject to the sulfur dioxide standards under § 60.42(b) for which the minimum amount of data required under § 60.47b(f) were not obtained during the reporting period, the following information is reported to the Administrator in addition to that required under paragraph (k) of this section:

* * * * *

(n) If a percent removal efficiency by fuel pretreatment (i.e., % R_f) is used to determine the overall percent reduction (i.e., % R_o) under § 60.45b, the owner or operator of the affected facility shall submit a signed statement with the report.

(1) Indicating what removal efficiency by fuel pretreatment (i.e., % R_f) was credited during the reporting period;

(2) Listing the quantity, heat content, and date each pre-treated fuel shipment was received during the reporting period, the name and location of the fuel pretreatment facility; and the total quantity and total heat content of all fuels received at the affected facility during the reporting period.

* * * * *

(q) The owner or operator of an affected facility described in § 60.44b(j) or § 60.44b(k) shall submit to the Administrator a report containing:

* * * * *

(2) The average fuel nitrogen content during the reporting period, if residual oil was fired; and

(3) If the affected facility meets the criteria described in § 60.44b(j), the results of any nitrogen oxides emission tests required during the reporting period, the hours of operation during the reporting period, and the hours of operation since the last nitrogen oxides emission test.

(r) The owner or operator of an affected facility who elects to demonstrate that the affected facility combusts only very low sulfur oil under § 60.42b(j)(2) shall obtain and maintain at the affected facility fuel receipts from the fuel supplier which certify that the oil meets the definition of distillate oil as defined in § 60.41b. For the purposes of this section, the oil need not meet the fuel nitrogen content specification in the definition of distillate oil. Reports shall be submitted to the Administrator certifying that only very low sulfur oil meeting this definition was combusted in the affected facility during the reporting period.

(s) The reporting period for the reports required under this subpart is each six-month period. All reports shall be submitted to the Administrator and shall be postmarked by the 30th day following the end of the reporting period.

Subpart Dc—[Amended]

8. Section 60.48c is amended by revising paragraphs (c), (d), (e) introductory text, (e)(2), (e)(3), and (e)(11); and by adding paragraph (j) to read as follows:

§ 60.48c Reporting and recordkeeping requirements.

* * * * *

(c) The owner or operator of each coal-fired, residual oil-fired, or wood-fired affected facility subject to the opacity limits under § 60.43c(c) shall submit excess emission reports for any excess emissions from the affected facility which occur during the reporting period.

(d) The owner or operator of each affected facility subject to the SO_2 emission limits, fuel oil sulfur limits, or percent reduction requirements under § 60.42c shall submit reports to the Administrator.

(e) The owner or operator of each affected facility subject to the SO_2 emission limits, fuel oil sulfur limits, or percent reduction requirements under § 60.43c shall keep records and submit reports as required under paragraph (d) of this section, including the following information, as applicable.

* * * * *

(2) Each 30-day average SO_2 emission rate (nj/J or lb/million Btu), or 30-day average sulfur content (weight percent), calculated during the reporting period, ending with the last 30-day period; reasons for any noncompliance with the emission standards; and a description of corrective actions taken.

(3) Each 30-day average percent of potential SO_2 emission rate calculated during the reporting period, ending with the last 30-day period; reasons for any noncompliance with the emission standards; and a description of the corrective actions taken.

* * * * *

(11) If fuel supplier certification is used to demonstrate compliance, records of fuel supplier certification is used to demonstrate compliance, records of fuel supplier certification as described under paragraph (f)(1), (2), or (3) of this section, as applicable. In addition to records of fuel supplier certifications, the report shall include a certified statement signed by the owner or operator of the affected facility that the records of fuel supplier certifications submitted represent all of the fuel combusted during the reporting period.

* * * * *

(j) The reporting period for the reports required under this subpart is each six-month period. All reports shall be submitted to the Administrator and shall be postmarked by the 30th day following the end of the reporting period.

Subpart Ea—[Amended]

9. Section 60.59a is amended by revising paragraphs (e), (f), and (g) to read as follows:

§ 60.59a Reporting and recordkeeping requirements.

* * * * *

(e)(1) The owner or operator of an affected facility located within a large MWC plant shall submit annual compliance reports for sulfur dioxide, nitrogen oxide (if applicable), carbon monoxide, load level, and particulate matter control device temperature to the Administrator containing the information recorded under paragraphs (b)(1), (2)(ii), (4), (5), and (6) of this section for each pollutant or parameter. The hourly average values recorded under paragraph (b)(2)(i) of this section are not required to be included in the annual reports. Combustors firing a mixture of medical waste and other MSW shall also provide the information under paragraph (b)(15) of this section, as applicable, in each annual report. The owner or operator of an affected facility must submit reports semiannually once the affected facility is subject to permitting requirements under Title V of the Act.

(2) The owner or operator shall submit a semiannual report for any pollutant or parameter that does not comply with the pollutant or parameter limits specified in this subpart. Such report shall include the information recorded under paragraph (b)(3) of this section. For each of the dates reported, include the sulfur dioxide, nitrogen oxide, carbon monoxide, load level, and particulate matter control device temperature data, as applicable, recorded under paragraphs (b)(2)(ii)(A) through (D) of this section.

(3) Reports shall be postmarked no later than the 30th day following the end of the annual or semiannual period, as applicable.

(f)(1) The owner or operator of an affected facility located within a large MWC plant shall submit annual compliance reports, as applicable, for opacity. The annual report shall list the percent of the affected facility operating time for the reporting period that the opacity CEMS was operating and collecting valid data. Once the unit is subject to permitting requirements under Title V of the Act, the owner or operator of an affected facility must submit these reports semiannually.

(2) The owner or operator shall submit a semiannual report for all periods when the 6-minute average levels exceeded the opacity limit under § 60.52a. The semiannual report shall include all information recorded under paragraph (b)(3) of this section which pertains to opacity, and a listing of the 6-minute average opacity levels recorded under paragraph (b)(2)(i)(A) of this section, which exceeded the opacity limit.

(3) Reports shall be postmarked no later than the 30th day following the end of the annual of semiannual period, as applicable.

(g)(1) The owner or operator of an affected facility located within a large MWC plant shall submit reports to the Administrator of all annual performance tests for particulate matter, dioxin/furan, and hydrogen chloride as recorded under paragraph (b)(7) of this section, as applicable, from the affected facility. For each annual dioxin/furan compliance test, the maximum demonstrated MWC unit load and maximum demonstrated particulate matter control device temperature shall be reported. Such reports shall be submitted when available and in no case later than the date of required submittal of the annual report specified under paragraphs (e) and (f) of this section, or within six months of the date the test was conducted, whichever is earlier.

(2) The owner or operator shall submit a report of test results which document any particulate matter, dioxin/furan, and hydrogen chloride levels that were above the applicable pollutant limit. The report shall include a copy of the test report documenting the emission levels and shall include the corrective action taken. Such reports shall be submitted when available and in no case later than the date required for submittal of any semiannual report required in paragraphs (e) or (f) of this section, or within six months of the date the test was conducted, whichever is earlier.

* * * * *

Subpart J—[Amended]

10. Section 60.107 is amended by revising paragraphs (a), (c) introductory text, (d), and (e) to read as follows:

§ 60.107 Reporting and recordkeeping requirements.

* * * * *

(a) Each owner or operator subject to § 60.104(b) shall notify the Administrator of the specific provisions of § 60.104(b) with which the owner or operator seeks to comply. Notification

shall be submitted with the notification of initial startup required by § 60.7(a)(3). If an owner or operator elects at a later date to comply with an alternative provision of § 60.104(b), then the Administrator shall be notified by the owner or operator in the report described in paragraph (c) of this section.

* * * * *

(c) Each owner or operator subject to § 60.104(b) shall submit a report except as provided by paragraph (d) of this section. The following information shall be contained in the report:

* * * * *

(d) For any periods for which sulfur dioxide or oxides emissions data are not available, the owner or operator of the affected facility shall submit a signed statement indicating if any changes were made in operation of the emission control system during the period of data unavailability which could affect the ability of the system to meet the applicable emission limit. Operations of the control system and affected facility during periods of data unavailability are to be compared with operation of the control system and affected facility before and following the period of data unavailability.

(e) The owner or operator of an affected facility shall submit the reports required under this subpart to the Administrator semiannually for each six-month period. All semiannual reports shall be postmarked by the 30th day following the end of each six-month period.

* * * * *

11. Section 60.108 is amended by revising paragraph (e) to read as follows:

§ 60.108 Performance test and compliance provisions.

* * * * *

(e) Each owner or operator subject to § 60.104(b) who has demonstrated compliance with one of the provisions of § 60.104(b) but a later date seeks to comply with another of the provisions of § 60.104(b) shall begin conducting daily performance tests as specified under paragraph (d) of this section immediately upon electing to become subject to one of the other provisions of § 60.104(b). The owner or operator shall furnish the Administrator with a written notification of the change in the semiannual report required by § 60.107(e).

Subpart CC—[Amended]

12. Section 60.293 is amended by revising paragraphs (c)(4), (c)(5), (d)(3) introductory text and (d)(3)(iii) to read as follows:

§ 60.293 Standards for particulate matter from glass melting furnace with modified-processes.

* * * * *

(c) * * *

(4) Determine, based on the 6-minute opacity averages, the opacity value corresponding to the 99 percent upper confidence level of a normal distribution of average opacity values.

(5) For the purposes of § 60.7, report to the Administrator as excess emissions all of the 6-minute periods during which the average opacity, as measured by the continuous monitoring system installed under paragraph (c)(1) of this section, exceeds the opacity value corresponding to the 99 percent upper confidence level determined under paragraph (c)(4) of this section.

(d) * * *

(3) An owner or operator may redetermine the opacity value corresponding to the 99 percent upper confidence level as described in paragraph (c)(4) of this section if the owner or operator:

* * * * *

(iii) Uses the redetermined opacity value corresponding to the 99 percent upper confidence level for the purposes of paragraph (c)(5) of this section.

* * * * *

Subpart NN—[Amended]

13. Section 60.403 is amended by revising paragraph (f) to read as follows:

§ 60.403 Monitoring of emissions and operations.

* * * * *

(f) Any owner or operator subject to the requirements under paragraph (c) of this section shall report on a frequency specified in § 60.7(c) all measurement results that are less than 90 percent of the average levels maintained during the most recent performance test conducted under § 60.8 in which the affected facility demonstrated compliance with the standard under § 60.402.

Subpart XX—[Amended]

14. Section 60.502 is amended by revising paragraphs (e)(3) and (e)(4) to read as follows:

§ 60.502 Standards for Volatile Organic Compound (VOC) emissions from bulk gasoline terminals.

* * * * *

(e) * * *

(3)(i) The owner or operator shall cross-check each tank identification number obtained in paragraph (e)(2) of this section with the file of tank vapor tightness documentation within 2 weeks after the corresponding tank is loaded, unless either of the following conditions is maintained:

(A) If less than an average of one gasoline tank truck per month over the last 26 weeks is loaded without vapor tightness documentation then the documentation cross-check shall be performed each quarter; or

(B) If less than an average of one gasoline tank truck per month over the last 52 weeks is loaded without vapor tightness documentation then the documentation cross-check shall be performed semiannually.

(ii) If either the quarterly or semiannual cross-check provided in paragraphs (e)(3)(i) (A) through (B) of this section reveals that these conditions were not maintained, the source must return to biweekly monitoring until such time as these conditions are again met.

(4) The terminal owner or operator shall notify the owner or operator of each non-vapor-tight gasoline tank truck loaded at the affected facility within 1 week of the documentation cross-check in paragraph (e)(3) of this section.

* * * * *

Subpart AAA—[Amended]

15. Section 60.531 is amended by revising the definition for ''wood heater'' to read as follows:

§ 60.531 Definitions.

* * * * *

Wood heater means an enclosed, wood burning appliance capable of and intended for space heating or domestic water heating that meets all of the following criteria:

(1) An air-to-fuel ratio in the combustion chamber averaging less than 35-to-1 as determined by the test procedure prescribed in § 60.534 performed at an accredited laboratory;

(2) A usable firebox volume of less than 20 cubic feet;

(3) A minimum burn rate of less than 5 kg/hr as determined by the test procedure prescribed in § 60.534 performed at an accredited laboratory; and

(4) A maximum weight of 800 kg. In determining the weight of an appliance for these purposes, fixtures and devices that are normally sold separately, such as flue pipe, chimney, and masonry components that are not an integral part of the appliance or heat distribution ducting, shall not be included.

16. Section 60.536 is amended by revising paragraph (f)(3) to read as follows:

§ 60.536 Permanent label, temporary label, and owner's manual.

* * * * *

(f) * * *

(3) If an appliance is a coal-only heater as defined in § 60.530, the following statement shall appear on the permanent label:

U.S. Environmental Protection Agency

This heater is only for burning coal. Use of any other solid fuel except for coal ignition purposes is a violation of Federal law.

* * * * *

Subpart SSS—[Amended]

17. Section 60.714 is amended by revising paragraph (a) to read as follows:

§ 60.714 Installation of monitoring devices and recordkeeping.

* * * * *

(a) Each owner or operator of an affected coating operation that utilizes less solvent annually than the applicable cutoff provided in § 60.710(b) and that is not subject to § 60.712 (standards for coating operations) shall maintain records of actual solvent use.

* * * * *

18. Section 60.717 is amended by revising paragraphs (c) and (d) introductory text, to read as follows:

§ 60.717 Reporting and monitoring requirements.

* * * * *

(c) Each owner or operator of an affected coating operation initially utilizing less than the applicable volume of solvent specified in § 60.710(b) per calendar year shall report the first calendar year in which actual annual solvent use exceeds the applicable volume.

(d) Each owner or operator of an affected coating operation, or affected coating mix preparation equipment subject to § 60.712(c), shall submit semiannual reports to the Administrator documenting the following:

* * * * *

PART 61—[AMENDED]

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416, 7601.

Subpart A—[Amended]

2. Section 61.04 is amended by revising paragraph (b) introductory text to read as follows:

§ 61.04 Address.

* * * * *

(b) Section 112(d) of the Act directs the Administrator to delegate to each State, when appropriate, the authority to implement and enforce national emission standards for hazardous air pollutants for stationary sources located in such State. If the authority to implement and enforce a standard under this part has been delegated to a State, all information required to be submitted to EPA under paragraph (a) of this section shall also be submitted to the appropriate State agency (provided, that each specific delegation may exempt sources from a certain Federal or State reporting requirement). The Administrator may permit all or some of the information to be submitted to the appropriate State agency only, instead of to EPA and the State agency. If acceptable to both the Administrator and the owner or operator of a source, notifications and reports may be submitted on electronic media. The appropriate mailing address for those States whose delegation request has been approved is as follows:

* * * * *

Subpart L—[Amended]

3. Section 61.139 is amended by removing paragraphs (i)(1)(ii), and paragraph (j)(3); re-designating paragraph (i)(1)(iv) as paragraph (i)(1)(ii); re-designating paragraph (i)(1)(v) as paragraph (i)(1)(iv); and revising newly designated paragraph (i)(1)(ii), and paragraphs (j)(2) introductory text, and (j)(2)(iv) to read as follows:

§ 61.139 Provisions for alternative means for process vessels, storage tanks, and tar-intercepting sumps.

* * * * *

(i) * * *

(1) * * *

(ii) For each carbon absorber, a plan for the method for handling captured benzene and removed carbon to comply with paragraphs (b)(1) and (2) of this section.

* * * * *

(j) * * *

(2) The following information shall be reported as part of the semiannual reports required in § 61.138(f).

* * * * *

(iv) For each vapor incinerator, the owner or operator shall specify the method of monitoring chosen under paragraph (f)(2) of this section in the first semiannual report. Any time the owner or operator changes that choice, he shall specify the change in the first semiannual report following the change.

* * * * *

Subpart M—[Amended]

4. Section 61.142 is amended by revising paragraph (b)(6) to read as follows:

§ 61.142 Standard for asbestos mills.

* * * * *

(b) * * *

(6) Submit semiannually a copy of visible emission monitoring records to the Administrator if visible emissions occurred during the report period. Semiannual reports shall be postmarked by the 30th day following the end of the six-month period.

* * * * *

5. Section 61.144 is amended by revising paragraph (b)(8) to read as follows:

§ 61.144 Standard for manufacturing.

* * * * *

(b) * * *

(8) Submit semiannually a copy of the visible emission monitoring records to the Administrator if visible emission occurred during the report period. Semiannual reports shall be postmarked by the 30th day following the end of the six-month period.

6. Section 61.147 is amended by revising paragraph (b)(8) to read as follows:

§ 61.147 Standard for fabricating.

* * * * *

(b) * * *

(8) Submit semiannually a copy of the visible emission monitoring records to the Administrator if visible emission occurred during the report period. Semiannual reports shall be postmarked by the 30th day following the end of the six-month period.

Subpart N—[Amended]

7. Section 61.163 is amended by revising paragraph (c)(3) to read as follows:

§ 61.163 Emission monitoring.

* * * * *

(c) * * *

(3) Determine, based on the 6-minute opacity averages, the opacity value corresponding to the 99 percent upper confidence level of a normal or log-normal (whichever the owner or operator determines is more representative) distribution of the average opacity values.

* * * * *

PART 63—[AMENDED]

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

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

Subpart A—[Amended]

2. Section 63.8 is amended by adding the last sentence in paragraph (g)(5) to read as follows:

§63.8 Monitoring requirements.

* * * * *

(g) * * *

(5) * * * For owners or operators complying with the requirements of § 63.10(b)(2)(vii) (A) or (B), data averages must include any data recorded during periods of monitor breakdown or malfunction.

§ 63.9 [Amended]

3. Section 63.9 is amended by removing and reserving paragraph (b)(4)(iv).

4. Section 63.10 is amended by adding paragraphs (b)(2)(vii)(A), (b)(2)(vii)(B), and (b)(2)(vii)(C) and removing and reserving paragraph (e)(3)(i)(C) to read as follows:

§ 63.10 Recordkeeping and reporting requirements.

* * * * *

(b) * * *

(2) * * *

(vii) * * *

(A) This paragraph applies to owners or operators required to install a continuous emissions monitoring system (CEMS) where the CEMS installed is automated, and where the calculated data averages do not exclude periods of CEMS breakdown or malfunction. An automated CEMS records and reduces the measured data to the form of the pollutant emission standard through the use of a computerized data acquisition system. In lieu of maintaining a file of all CEMS subhourly measurements as required under paragraph (b)(2)(vii) of this section, the owner or operator shall retain the most recent consecutive three averaging periods of subhourly measurements and a file that contains a hard copy of the data acquisition system algorithm used to reduce the measured data into the reportable form of the standard.

(B) This paragraph applies to owners or operators required to install a CEMS where the measured data is manually reduced to obtain the reportable form of the standard, and where the calculated data averages do not exclude periods of CEMS breakdown or malfunction. In lieu of maintaining a file of all CEMS subhourly measurements as required under paragraph (b)(2)(vii) of this section, the owner or operator shall retain all subhourly measurements for the most recent reporting period. The subhourly measurements shall be retained for 120 days from the date of the most recent summary or excess emission report submitted to the Administrator.

(C) The Administrator or delegated authority, upon notification to the source, may require the owner or operator to maintain all measurements as required by paragraph (b)(2)(vii), if the administrator or the delegated authority determines these records are required to more accurately assess the compliance status of the affected source.

* * * * *

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Friday
February 12, 1999

Part XI

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 707 and 874

Abandoned Mine Land (AML) Reclamation Program; Enhancing AML Reclamation; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 707 and 874

RIN: 1029–AB89

Abandoned Mine Land (AML) Reclamation Program; Enhancing AML Reclamation

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

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is amending its rules concerning the financing of Abandoned Mine Land reclamation (AML) projects that involve the incidental extraction of coal. Projections of receipts to the AML fund through the year 2004, when the authority to collect fees will expire, strongly indicate that there will be insufficient money to address all problems currently listed in the Abandoned Mine Land Inventory System. Given these limited AML reclamation resources, OSM is establishing an innovative way for AML agencies, working with contractors, to maximize available funds to increase AML reclamation.

The first revision amends the definition of ''government-financed construction'' to allow less than 50 percent government funding when the construction is an approved AML project under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or ''the Act''). The second revision adds a new section which requires specific consultations and concurrences with the Title V regulatory authority for AML construction projects receiving less than 50 percent government financing. These consultations and concurrences are intended to ensure the appropriateness of the project being undertaken as a Title IV AML project and not under the Title V regulatory program.

DATES: Effective March 15, 1999.

FOR FURTHER INFORMATION CONTACT: D. J. Growitz, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW, Washington, D.C. 20240; Telephone: 202–208–2634. E-Mail: dgrowitz@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. What is the Abandoned Mine Land (AML) reclamation program?

B. How is AML reclamation funded and how do States and Indian Tribes implement their programs?

C. What types of abandoned sites does this rule target?

D. How will the final rule work?

E. What is the relationship between the AML agency and the AML contractor?

F. What is an example of how the final rule will reduce the government's share of reclamation costs under Title IV?

G. Can private organizations (*e.g.*, watershed groups) assist in AML reclamation efforts?

H. Will the final rule adversely affect AML reclamation at some sites?

I. How will an AML agency approve reclamation projects under the final rule?

J. What will be the consequence of AML contractors removing coal outside the limits authorized by the AML project?

K. The proposed rulemaking.

II. Response to Comments and Final Rule

A. What is the statutory authority for the final rule?

B. What is the amended definition of ''government-financed construction'' at section 707.5?

C. What is the change in information collection for section 707.10?

D. What are the information collection requirements for section 874.10?

E. What is the purpose behind new section 874.17: ''AML agency procedures for reclamation projects receiving less than 50 percent government funding?'

F. How will the consultation in section 874.17(a) work?

G. What types of concurrences between the AML agency and the regulatory authority will be required in section 874.17(b)?

H. Under section 874.17(c), how will the AML agency document the results of the consultation and the concurrences with the Title V regulatory authority?

I. What special requirements will apply for qualifying section 874.17(d) reclamation projects?

J. What must the contractor do under final section 874.17(e) if extracting coal beyond the limits of the incidental coal specified in section 874.17(b)?

K. How does this rulemaking relate to the established AML priority system for selecting projects?

L. Is this rulemaking really more about remining than AML reclamation?

M. Other comments.

III. Procedural Determinations

I. Background

A. What is the Abandoned Mine Land (AML) Reclamation Program?

Title IV of SMCRA established the AML Reclamation Program in response to concern about extensive environmental damage caused by past coal mining activities. The program is funded primarily from a fee collected on each ton of coal mined in the country. This fee is deposited into a special fund, the Abandoned Mine Land Fund (Fund), and is appropriated annually to address abandoned and inadequately reclaimed mining areas where there is no continuing reclamation responsibility by any person under State or Federal law. Under Title IV, the funding of reclamation projects is subject to a priority schedule with emphasis on sites affecting public health, safety, general welfare and property. In contrast, Title V establishes a program for regulating active mining and reclamation.

In most cases, the implementation of both Title IV and Title V authority has been delegated to States. Depending upon each State's internal organizational structure, the Title IV and Title V programs are, in many cases, carried out by separate State authorities. Currently, 23 States and 3 Indian Tribes (the Hopi, the Navajo and the Crow) have authority to receive grants from the Fund and are implementing Title IV reclamation programs in accordance with 30 CFR Subchapter R, and through implementing guidelines published in the **Federal Register** on March 6, 1980 (45 FR 27123), and revised on December 30, 1996 (45 FR 68777). In States and on Indian lands that do not have a Title IV program, reclamation is carried out by OSM.

B. How is AML Reclamation Funded and How Do States and Indian Tribes Implement Their Programs?

State and Indian Tribal AML programs are funded at 100 percent by OSM from money appropriated annually from the AML Fund. The States and Indian Tribes must submit grant applications in accordance with procedures established by OSM and existing grant regulations found at 30 CFR 886. They must certify with each grant that the requirements of all applicable laws and regulations are met, including the Clean Water Act, the Clean Air Act, the National Historic Preservation Act, and the Endangered Species Act. They may undertake only projects that are eligible for funding as described in either Section 404 or Section 411 of SMCRA and which meet the priorities established in Section 403 of SMCRA. OSM requires that the State Attorney General or other chief legal officer certify that each reclamation project to be undertaken is an eligible site.

Certain environmental, fiscal, administrative and legal requirements must be in place in order for a program to receive grants for reclamation. An extensive description of these requirements can be found at 30 CFR 884, but certain of those are mentioned here to highlight safeguards the AML program has in place. For example, the agency must have written policies and procedures which outline how it will comply with the requirements of

SMCRA and implementing regulations in conducting a reclamation program, how it will comply with all applicable Federal and State laws and regulations, how projects will be ranked for reclamation priority and how the public will be given an opportunity to comment on proposed reclamation projects. The State or Indian Tribe chooses individual projects based upon the selection criteria in its reclamation program. While these criteria differ among AML programs, all consider the priority of the problem, public opinion regarding the project, cost effectiveness, technical feasibility and how the area will be used once reclaimed.

State and Tribal programs seek public input in several ways. For example, some AML programs require that a notice requesting comments on proposed reclamation be published in newspapers of general circulation in the area to be reclaimed. Some publish newspaper notices asking the public to identify potential reclamation sites. Others have public meetings to discuss upcoming reclamation or to identify potential sites. Still other programs seek public input about reclamation activities or potential sites through **Federal Register** notices.

OSM does not approve individual projects. However, before construction begins on any project, OSM must ensure that all requirements of the National Environmental Policy Act of 1969 are met before providing authorization to proceed on the project.

OSM annually reviews the State and Tribal AML programs to ensure that all program requirements are properly met, including site eligibility, proper financial policies and procedures, and reclamation accomplishments. State and Tribal agencies and OSM also review completed projects to determine the success of AML reclamation. Completed projects may be revisited as part of a site-specific contract, as part of an annual post-construction evaluation, or as otherwise specified under the State or Tribal AML reclamation program's maintenance plan. Further, AML reclamation programs evaluate selected, completed AML reclamation projects to determine how effective the overall reclamation program has been. Normally, these evaluations are annual, random samples of many types of reclamation, such as reclaimed subsidence areas, eliminated landslides, sealed openings and removed refuse piles.

C. What Types of Abandoned Sites Does This Rule Target?

The rule is intended to facilitate the reclamation of certain abandoned mine lands that have little likelihood of otherwise being reclaimed under either the current Title IV or Title V programs. These sites would not likely be reclaimed under the Title IV program because of severely limited funds; nor would they likely be mined under the Title V regulatory program due to the marginal coal reserves they contain and/or the potential risk for long-term liability associated with existing acid mine drainage (AMD) or other environmental problems.

According to estimates in the Abandoned Mine Land Inventory System, the most serious AML problems—those identified as Priority 1 or Priority 2 sites in the System—would cost more than 2.6 billion dollars to reclaim. These include highwalls, open shafts and accessible underground mines presenting a danger to human health, safety and welfare.

Thousands of other AML-eligible sites—Priority 3 sites that do not pose the same degree of danger to the public but that do adversely affect the environment—would cost tens of billions more dollars to correct. Without an innovative way to finance more reclamation, there is very little likelihood that enough AML money would ever be available to fund the reclamation of even the most serious of these eligible sites, let alone the eligible sites with primarily environmental impacts. Without adequate funding, exposed coal seams and subsided underground workings would continue to contribute acid mine drainage (AMD) and other environmental problems, often far beyond their realty boundaries. Interconnected abandoned mine passageways flooded with poor quality water would continue to discharge the characteristic ''yellow-boy'' iron precipitates and low pH waters into streams. Coal refuse piles would continue to yield excessive sediment and acid discharges into local water supplies killing fish, endangering wildlife and rendering streams useless for recreation.

The challenge which OSM attempts to address with this rule is how to accomplish reclamation at mines that the AML fund cannot afford to reclaim and that the private sector is not interested in remining. The answer for these sites lies in increasing the amount of reclamation without increasing the cost to the AML Fund.

D. How Will the Final Rule Work?

The current rules at 30 CFR 707.1 and 707.5 provide for a Title V exemption for the extraction of coal which is an incidental part of a government-financed construction. ''Government-financed construction'' requires that the project be funded 50 percent or more by funds appropriated from the government financing agency's budget or obtained from general revenue bonds. AML guidelines first published in the **Federal Register** on March 6, 1980 (45 FR 14810) and later amended on December 30, 1996 (61 FR 68777) provide for the sale of coal recovered incidental to an approved AML reclamation project. The 50 percent government-financing requirement of section 707.5 has not affected agency selection of AML construction projects where the anticipated proceeds from the sale of incidental coal were expected to be a small percentage of the total project cost. However, in cases where the anticipated proceeds from the sale of incidental coal were expected to be 50 percent or greater of the total project cost—a level that would have reduced the government contribution below the required 50 percent floor—this funding requirement discouraged AML reclamation.

For sites with substantial deposits of incidental coal, we expect that AML contractors will reflect the anticipated sale of such coal through a lowered project bid price. The lowered project bid price would, in turn, reduce the government's share of the total cost of the project. As a result, less public funding will be required for these sites to accomplish the same level of AML reclamation. By reducing the government's share of the cost of reclamation, AML money becomes available for other AML reclamation projects that would otherwise not be funded. Under this new rule, the contractor makes a profit, the government saves money and—most important of all—additional abandoned sites that we could not afford to reclaim in the past are reclaimed.

The key limitation in the application of this rule is that the coal removed and sold must be ''incidental'' to the reclamation project—physically necessary to remove in order to address the identified health, safety or environmental problem of the approved AML construction project. This concept conforms to existing regulations at 30 CFR 707.5. Coal extracted beyond that which is determined to be incidental will be subject to Title V permitting provisions.

This rule is not designed to address sites involving redisturbance and subsequent reclamation of abandoned mine lands, such as highwalls and outslopes that have become environmentally stable over the years and no longer pose problems. Rather, we hope to target long-standing AML

health, safety and environmental problems by the partial or complete removal of coal during AML reclamation projects. Such projects have the potential to remediate subsidence, to reduce the likelihood of perpetual acid discharge problems that are costly to treat through conventional chemical means, and, in some cases, to permanently eliminate AMD by removing the source of the problem.

This final rule will not alter existing AML program requirements. The eligibility for AML projects, the procurement systems which States and Indian Tribes use to contract for AML reclamation, and all Federal and State requirements that pertain to AML projects will remain the same. Undertaking AML projects that use less than 50 percent government-financing will not be mandatory for States or Indian Tribes; they may choose not to participate in this aspect of AML reclamation. However, State and tribal programs that do participate will be responsible to ensure that the provisions of this rule are applied appropriately and not abused.

E. What is the Relationship Between the AML Agency and the AML Contractor?

The relationship between the AML agency and the AML contractor under the final rule will be the same as for any approved reclamation project. Actual reclamation is usually done under a site-specific contract between the reclamation agency and third-party contractors. These contracts clearly outline the scope of work for each project, the cost, the time frames involved, how the contractor will be paid and penalties for failure to meet the contractual obligations by either party. The content of the contracts, along with bidding and selection procedures, performance bonding requirements and other contractual matters are established within each program in accordance with State or Tribal laws. The AML agency ensures that the contractor complies with applicable procedures through site visits and other monitoring techniques. If the contractor does not meet the terms of the contract, the AML agency invokes the penalties contained in the contract and allowed by law.

Each contract sets forth any unique features for the project to be reclaimed and any site-specific criteria for that project. For example, a project to address water quality problems will outline the acceptable pH or sediment levels for the water or sediment, the monitoring period associated with the treatment, whether wetlands will be created, any projected effects on wildlife and any particular environmental impacts at the site or on adjacent properties. Sediment and water quality control plans must provide for adequate environmental protection during the construction phase of the reclamation project as well as after its completion.

When contracts are written, the AML reclamation agency can require that a project pass specific requirements after reclamation. For example, a contract could specify that a retaining wall provide protection for a highway for a three-year period. The contract could also specify that, should the retaining wall fail, the contractor must return to repair the damage. The frequency and extent of follow-up by the AML reclamation agency is written into the contract. AML contracts also identify the incidental coal that can be extracted under the project.

F. What Is an Example of How the Final Rule Will Reduce the Government's Share of Reclamation Costs Under Title IV?

The following example illustrates the process by which extraction of incidental coal under this rule can reduce the cost to the government for Title IV reclamation at an AML eligible site.

Example: After the requisite consultation and concurrences with the Title V regulatory authority (see response to question E. in Section I of this preamble: ''What is the relationship between the AML agency and the AML contractor?''), the AML agency announces a contract solicitation to receive bids for the reclamation of a refuse pile contributing sediment and acid mine drainage to local streams. Prior to the solicitation, the AML agency estimates the total cost of reclaiming the refuse pile (removing it to another site, burying it, and revegetating both sites) at $500,000. This figure includes a $50,000 allowance for administrative expenses such as project design and project monitoring.

Based on existing chemical analysis of the refuse pile, including BTU information, AML estimates place the net proceeds of the incidental coal in the refuse pile (after transportation, cleaning, royalty costs, etc.) at roughly $400,000. The estimated net cost for completing the project would then be $100,000 ($500,000—$400,000). Based on these estimates, project bids from contractors would be expected to come in around the $100,000 range.

Therefore, reclamation of a project that would ordinarily cost the AML agency $500,000 without contractor sale of incidental coal, or that would cost the agency at least $250,000 under the existing rule requiring at least 50 percent government financing, will now cost only about $100,000 under this new rule. If the contract is awarded, the contractor becomes fully responsible for the completion of the work regardless of the contractor's actual proceeds on the sale of incidental coal.

G. Can Private Organizations (e.g., Watershed Groups) Assist in AML Reclamation Efforts?

Yes. AML agencies can form partnerships with industry, private citizens and other government agencies to help address AML problems. Partnerships, such as those developed under the Clean Streams Initiative—a partnership of Federal, State and local government as well as other public and private interests—can assist in reclaiming lands. Outside funds can also be contributed for specific AML projects as allowed by law.

H. Will the Final Rule Adversely Affect AML Reclamation at Some Sites?

No. Under the AML program, the percentage of government funding for reclamation of an eligible site does not adversely impact the quality of the reclamation of that site. As with any other AML reclamation project, under this final rule the AML agency selects individual sites from the Abandoned Mine Land Inventory using its priority system. The AML agency then develops the reclamation parameters for that site and includes them in its reclamation contract. We emphasize that the AML agency, not the AML contractor or the owner of the coal, establishes these parameters. The AML agency oversees the reclamation and ensures that the contractor adheres to the contract requirements, including removing and selling only that coal which has been identified as incidental.

I. How Will an AML Agency Approve Reclamation Projects Under the Final Rule?

As with any other AML project, reclamation projects involving the incidental extraction of coal and reduced government funding levels will have to meet the requirements specified in 30 CFR Subchapter R. The AML agency controls every project specification from design, to bidding, to final reclamation completion. The selection of reclamation sites by the AML agency is based on the need to protect the public health and safety and/or the environment from the adverse effects of past mining activities. A particular site can be selected only after the AML agency determines that private industry would be unable or unwilling to remine and reclaim the site as a Title V operation, and the State Attorney General or other legal officer certifies that the project meets the eligibility requirements specified in State or Indian Tribe counterparts to Title IV.

OSM is expressly prescribing certain procedures to ensure that the provisions

of this final rule are implemented appropriately. First, the AML agency, in consultation with the Title V regulatory authority, determines whether the site is appropriate for AML reclamation activities based on the likelihood of extracting the coal under a Title V permit. Second, the Title V regulatory authority and the Title IV AML agency have to concur on the boundaries of the AML project and on the identification of incidental coal—that which is physically necessary to remove to accomplish the approved reclamation.

J. What Will be the Consequence of AML Contractors Removing Coal Outside the Limits Authorized by the AML Project?

AML contractors removing coal outside the limits authorized by the AML project will be subject to contract remedies as deemed appropriate by the AML agency. These can include termination of AML contracts, forfeiture of any performance and reclamation bonds, or other remedies provided by law for breach of contract. The AML agency will further be expected to notify the Title V regulatory authority when any unauthorized coal is removed.

Sometimes there is unintended and extremely limited removal of coal beyond that which has been determined to be incidental to the project that may not justify termination of the AML contract or bond forfeiture. Further, when the amount of unauthorized coal removal is less than 250 tons, the operation may be exempt from Title V permitting requirements under 30 CFR 700.11(a)(2). We rely on the experience and judgment of AML authorities, in consultation with Title V regulatory authorities, as appropriate, to determine when a contractor has exceeded the allowable limits for removal and sale of coal at an AML project. The consequences of removing coal located outside the project limits is discussed further at Section II of this preamble in the response to question J: ''What must the contractor do under final section 874.17(e) if extracting coal beyond the limits of the incidental coal specified in section 874.17(b)?''

K. The Proposed Rulemaking

After substantial public outreach, OSM proposed rules on June 25, 1998 (63 FR 34768) with a 30-day comment period. The comment period was reopened and extended on July 31, 1998 (63 FR 40871) until August 11, 1998, and reopened and extended again on September 3, 1998 (63 FR 46951) until September 18, 1998. No public meetings or hearings were requested or held. OSM proposed to revise the definition of ''government-financed construction'' at section 707.5 and add a new section 874.17 detailing procedures for AML construction projects initiated under the scope of the new definition.

OSM received comments in response to the proposed rule from 21 commenters representing industry, State regulatory authorities, Federal agencies, and environmental groups. OSM has reviewed each comment carefully and has considered the commenters' suggestions and remarks in preparing this final rule.

II. Response to Comments and Final Rule

The great majority of commenters generally supported the proposed rule. Twelve commenters supported the proposal in whole or in part. Six commented without supporting or opposing the proposed rule. And, three objected to the proposed rule. The wide-ranging comment support included such reasons as: the rule represents a sensible approach to achieving greater AML reclamation at a lower cost; the rule would permit greater flexibility needed to address reclamation problems that are not being addressed under current rules; the rule would bring to bear additional resources to remedy the effects of past mining, including the numerous acid mine drainage problems occurring nationwide; the rule would provide adequate safeguards, including sound environmental protection safeguards, to ensure that it is applied only in appropriate circumstances; and the rule would encourage on-the-ground reclamation improvements at many AML eligible sites that otherwise would not occur due to limited AML funding and the absence of sufficient incentives to remine and reclaim such sites as Title V regulated operations.

The three commenters objecting to the proposed rule asserted that it was an incentive for remining—a process that involves Title V regulated coal mining at previously mined sites where the original operations left some coal in the ground, on the surface or in coal mine waste piles. Our response to this assertion can be found in the answer to question L. in Section II of this preamble: ''Is this rulemaking really more about remining than AML reclamation?''

A. What is the Statutory Authority for the Final Rule?

Three sections in SMCRA outline the eligibility requirements for sites being considered for funding under the AML program. They are sections 404, 402(g)(4)(B)(I), and 402(g)(4)(B)(ii). Section 403 of SMCRA establishes priorities for expenditures from the AML Fund on eligible sites. An eligible site must then meet one of the five priorities of Section 403(a)(1)–(5) in order to be funded.

Section 413(a) of SMCRA provides the Secretary with the ''power and the authority, if not granted it otherwise, to engage in any work and to do all things necessary or expedient, including the promulgation of rules and regulations, to implement and administer the provisions of this [Title IV].'' This final rule change is narrowly limited in its application to the AML program and is necessary and expedient for OSM and the States and Tribes to more efficiently and effectively carry out the reclamation mandate established by Congress. This statutory authority allows OSM to propose revisions to the AML program that will provide States and Tribes the authority to reduce project costs to the maximum extent practical on abandoned mine sites which have deposits of coal or coal refuse remaining. Thus, the final rule will allow for more program-wide reclamation for the same level of program funding.

In addition, Congress specifically provided under Section 528(2) that SMCRA would not apply to activities involving the ''extraction of coal as an incidental part of Federal, State or local government-financed highway or other construction under regulations established by the regulatory authority.'' Thus, Title V permitting requirements do not apply to areas from which coal is extracted as an incidental part of a government-financed construction operation. Because AML reclamation projects are government-financed, they qualify as government-financed construction under Section 528(2).

Each of the three opposing commenters challenged the legal authority promulgating this rule. The first stated that the congressional intent behind the Section 528(2) exemption was to facilitate public works projects, including highway construction, rather than projects authorized under Title IV. The second commenter did not categorically exclude AML projects from the ambit of the Section 528 exemption, but maintained that the elimination of the 50 percent funding requirement opened the exemption to ''all construction'' in contravention to the intent of Congress (citing H.R. Rep., No. 95–492, at 112 (1977)). The third commenter stated, without support, his conclusion that OSM lacked legal authority for its rule.

In response to these commenters, OSM notes that the plain language of Section 528(2) exempts the ''extraction of coal incidental to * * * government-

financed highway or other construction * * * .'' While the legislative history of this exemption does not indicate what ''other [government-financed] construction'' Congress intended to exempt, the legislative history is clear that Congress did not intend to exempt the broad brush of private construction, *i.e.*, the ''all construction'' referenced by the second commenter. (See proposed rules, 43 FR 14672, September 18, 1978; citing to H.R. Conf. Rep. No. 95–493, at 112 (1977)). As the legislative history of Section 528(2) indicates, Congress patterned the exemption in some ways after the Pennsylvania Highway Law and was very much concerned with ensuring appropriate government reclamation of affected areas. (43 FR 14672, September 18, 1978; citing to H.R. 5988, 93d Cong. § 203 (1973); 119 Cong. Rec. 1368 (January 18, 1973, discussing § 203 of H.R. 5988)).

Approved AML construction projects are consistent with the constituent elements of the Section 528(2) exemption for the extraction of coal incidental to government-financed ''other'' construction. These AML projects are ''government-financed'' and, from start to finish, government-initiated, government-approved, and government-monitored. The only coal that can be extracted by these projects is that which is incidental to the reclamation of the site and delineated in the AML contract. In this regard, AML construction projects are not unlike other government-financed construction, such as that of airports and schools, for which the ''other construction'' exemption provision of Section 528 has been recognized to apply. Even more than in airport and school construction, the preeminent reclamation purpose of AML construction projects satisfies congressional intent that exempted government-financed construction projects address the reclamation concerns of affected areas.

As early as 1980, the Secretary formally recognized the applicability of the Section 528(2) exemption to the incidental recovery of coal in conjunction with AML projects. (AML Guidelines, Item B. 5., 45 FR 14810, March 6, 1980). Therefore, while the application of the Section 528(2) exemption to AML construction projects may not have been specifically envisioned by Congress twenty years ago, such application is reasonable and consistent with what we know from the legislative history of Congress' intent to exempt ''other'' government-financed construction from the provisions of the Act.

B. What is the Amended Definition of ''Government-financed Construction'' at Section 707.5?

OSM proposed to amend the definition of ''government-financed construction'' in section 707.5 of the permanent program regulations to allow less than 50 percent government funding from OSM or other AML agencies for construction undertaken as an approved AML reclamation project under Title IV of the Act when the reclamation involves the incidental extraction of coal. A government agency includes a State or Indian Tribe with an approved Title IV program under the definition of agency found at 30 CFR 870.5. For those States and Indian Tribes that do not have approved Title IV programs, a government agency means OSM or its designated State agent.

AML reclamation projects are funded from several sources, including private individuals who donate time and money, environmental groups, utilities, industry and the government through the Title IV program. Under the previous definition of ''government-financed construction,'' the government's financial share of the AML reclamation had to be at least 50 percent of the total project cost. By reducing the required government share for these AML projects, we anticipate that the final rule will free up AML money to do reclamation that otherwise might never be accomplished.

One commenter opposed the provisions of the proposed rule which would allow less than 50 percent government funding when the construction is an approved AML reclamation project. That commenter cited the preamble to the 1978 rule, which originally proposed the 50 percent funding requirement, to support the claim that the funding requirement serves to *''exempt only those projects in which the government has a significant government interest.''* (Emphasis added by commenter.) (43 FR 41672–3, September 18, 1978). The commenter also viewed the funding requirement as fulfilling Congress' intent to limit carefully and narrowly the scope of the Section 528(2) exemption.

However, in the preamble to the 1979 final rule, OSM acknowledged that it had considered alternatives to lowering the 50 percent funding requirement. In that preamble, OSM stated that little rationale had been received in support of a lower percentage and that the only example which had been given of a public benefit from such lowering was a donated haul road. In that same preamble discussion, OSM indicated that it believed there would be few instances in which the 50 percent funding requirement would discourage construction that otherwise would comply with a lower percentage. (44 FR 14949, March 13, 1979).

Now, some twenty years later, we fully support eliminating the 50 percent funding requirement for approved AML projects. Our rationale is, to a large degree, based upon the unique governmental character and protections associated with approved AML construction projects and the substantial public benefit reasonably expected from the reclamation of a considerable number of AML sites which would not otherwise be reclaimed because of the prior 50 percent standard.

See the response to question B. in Section II of this preamble for a discussion of OSM's statutory authority for eliminating the funding requirement for approved AML projects. As amended, the section 707.5 definition for ''government-financed construction'' will continue to narrowly limit the scope of the exemption in a manner which we believe is consistent with the congressional intent of Section 528 of SMCRA, the overall structure of SMCRA, and its goal of promoting the reclamation of previously mined eligible areas.

Another commenter asked OSM to consider revising the proposed definition in section 707.5 in a manner that would recognize that any AML project which involves the incidental removal of coal is government-funded construction, regardless of funding level and technique. The commenter was concerned that in-kind payments such as administrative expenses incurred by the AML agency in reviewing and approving the project may not qualify as government funding and thus preclude projects where there was no direct funding by the AML agency.

OSM assures the commenter that all expenses incurred directly or indirectly by the AML agency, such as project design, project solicitation and project management and project oversight qualify as government funding under the section 707.5 definition based on long-standing grants practice in the AML program. In light of this, OSM does not believe there is a need to revise the proposed definition. The definition of ''government-financed construction'' at section 707.5 is adopted as proposed.

C. What Is the Change in Information Collection for Section 707.10?

OSM is revising section 707.10 which contains the information collection requirements for Part 707. The revision changes the prior justification for Part

707's exemption from the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The revised basis for this exemption is that the information required to be maintained in section 707.12 consists only of information that would be provided by persons in the normal course of their business activities. No comments were received on section 707.10, ''Information collection,'' and it is adopted as proposed.

D. What Are the Information Collection Requirements for Section 874.10?

OSM is adding a section 874.10, which contains the information collection requirements for Part 874 and the Office of Management and Budget (OMB) clearance number. The addition includes the estimated reporting burden per project for complying with the new information collection requirements contained in the final rule.

One commenter suggested that OSM's estimate of 27 hours for the burden of the proposed collection of information under the requirements of the proposal was too low. The commenter suggested 60 hours was a more reasonable estimate and we have accepted this figure in the final rule at section 874.10, ''Information collection.''

E. What is the Purpose Behind New Section 874.17: ''AML Agency Procedures for Reclamation Projects Receiving Less Than 50 Percent Government Funding?''

This new section outlines the procedures an AML agency will need to follow in approving AML projects receiving less than 50 percent government funding because of planned coal extraction incidental to the reclamation. Its intent is to ensure that the revised definition of ''government-financed construction'' at 30 CFR 707 is applied only when appropriate to achieve reclamation at AML-eligible sites.

Several commenters agreed with OSM that sufficient safeguards exist to ensure the procedure is used only in appropriate circumstances. Another acknowledged that it will now be incumbent upon both the States and OSM to implement the rule in a professional and responsible manner. These comments are consistent with our belief that the experience and safeguards of the AML program, combined with OSM's oversight role, will prevent abuse of the provisions in this rule. Again, we emphasize that States—not contractors or operators—select projects, solicit bids and decide whether to award contracts.

Two commenters opposed the rule citing a potential for substantial administrative abuse. One commenter quoted OSM's 1978 justification for proposing the 50 percent funding requirement as minimizing the opportunity for this abuse. Both commenters looked to the history of SMCRA as providing examples of how its provisions had been abused and such abuse had been tolerated by regulatory authorities. Each commenter saw every reason to expect that regulatory authorities would participate in such abuse in the future.

OSM is very much aware of the pressure for regulatory authorities to apply this rule in such a way as to maximize AML reclamation by maximizing coal extraction. It was for this reason that OSM added to its original outreach document the consultation and concurrence requirements of section 874.17(a) and (b) and the documentation requirements of section 874.17(c) which added an element of personal accountability to the required determinations and decisions. Notwithstanding, OSM has every reason to believe that the Title IV authorities will continue to properly implement their programs as they have done in the past. Should OSM discern a problem with program implementation, we will address that problem through oversight.

With regard to the commenter's reference to OSM's 1978 justification for the 50 percent funding requirement, we note that the same pressures to maximize coal extraction exist under both the prior and present rule. Yet the present rule, objected to by the commenters, provides significantly less potential for abuse than the prior rule in that it provides for the section 874.17 protections not found in that prior rule.

The introductory paragraph of section 874.17, ''AML agency procedures for reclamation projects receiving less than 50 percent government funding,'' is adopted as proposed. Paragraphs 874.17(a) through (e) are discussed in the sections that follow.

F. How Will the Consultation in Section 874.17(a) Work?

The consultation process under 874.17(a) requires the AML agency to consult with the regulatory authority to determine the likelihood of the coal at a proposed AML project being mined under a Title V permit. The purpose of this consultation is to ensure that the AML program and funds are not used for activities that should properly be permitted and regulated under Title V. Through this consultation process OSM seeks to ensure that AML funds are directed only to eligible sites.

OSM believes the information upon which the ''likelihood of the coal being mined under a Title V permit'' determination is made should be information that is reasonably available. In both our proposed and final rules, we have listed certain kinds of information that we believe would be available and helpful in reaching a decision on whether or not to proceed with the project under the AML program. These examples of ''available'' information are not exhaustive. Each site will present a different set of circumstances and problems which are best addressed on a case-by-case basis. We believe it best to leave to the experience and technical and professional judgment of the Title IV and Title V officials within each jurisdiction to decide if an abandoned mine should be remined under a Title V permit or reclaimed under the AML program. We will continue to monitor those decisions through our oversight of the respective State programs.

Under this section, the AML agency also will consult with the regulatory authority to determine the likelihood for potential problems and impacts arising between Title IV reclamation projects and any adjacent or nearby Title V operations. The purpose of this provision is to identify environmental problems at an early stage and to establish reclamation responsibility. An example of where reclamation responsibility needs to be established is where a hydrologic connection exists between nearby or adjacent Title IV and Title V activities. In such cases where there is acid mine drainage, OSM believes it is essential to ensure that responsibility for acid mine drainage arising from a permitted Title V activity but impacting a Title IV activity remains with the Title V permittee. Conversely, a Title V permittee would not be held responsible for any environmental problems originating from a nearby or adjacent Title IV reclamation activity impacting the Title V activity.

One commenter suggested that this section be amended to include consideration of economic factors which limit the development or marketing of the coal resources as an active mining venture.

OSM recognizes that economics related to environmental risks, permitting costs, regulatory compliance costs, quantity and quality of the coal as well as development and marketing issues are all important factors leading to a decision by a coal operator to mine or not mine under a Title V permit. A rough economic analysis is not precluded by the regulatory language.

The AML agency and regulatory authority are free to use any information and analyses, including an economic analysis, that they consider appropriate to reach and support their section 874.17 decisions. On the other hand, a thorough economic analysis would be costly, and the information needed for its preparation would not always be readily available. In light of these considerations, we are not requiring an economic analysis in the final rule.

The same commenter suggested that a finding be made during the consultation as to the likelihood that the project will aid in correcting existing off-site environmental damage caused by on-site problems, such as discharge of acid mine drainage. Because AML authorities already factor such considerations into their project-selection decisions, we see no reason to require an additional step in the consultation process.

Another commenter was encouraged that the ultimate determination of whether an abandoned mine site should be remined under a Title V permit or reclaimed under the Title IV AML program would be left to the experience and technical and professional judgment of State officials. This commenter, and one other, further expressed the hope that, under OSM's oversight of State programs, OSM would not be second-guessing State determinations about the likelihood that sites would be mined under Title V. One of these commenters further questioned whether, if OSM were to reverse a State determination, the State would then disallow the AML funding and cite the contractor for mining without a permit?

State authorities will have to make determinations under this rule based on experience, professional judgment, and the best available information. OSM does not intend to second-guess individual decisions by State Title IV authorities. Our approach to oversight will be to review first the State determinations, as documented under paragraph (c) of this section, to find out whether there is a pattern of questionable State determinations and, if there is such a pattern, to look into the reasons before deciding what remedial action would be appropriate. This is consistent with OSM's overall approach to oversight of State programs under SMCRA. Even if we were to determine that a State is not properly implementing this rule, there would be no basis for OSM to take action against a contractor who, in good faith, is and has been complying with all terms and conditions of the contract. Instead, our focus would be on working with the State to correct any program deficiencies.

One commenter indicated that the waiver of AML reclamation fees was key to offsetting some fairly significant risks to contractors in taking on an AML project under this rule. Among the risks noted by the commenter were the quantity and quality of the incidental coal, negotiation of a lease and associated royalty payments, potential bonding requirements, and the responsibility to complete the project regardless of the return on the sale of the incidental coal. The commenter believed it might be necessary to consider ''additional adjustments'' in the final rule in order to encourage contractors to undertake this type of project.

OSM realizes that there is a significant factor of operator risk in any AML reclamation contract whether or not it involves the incidental extraction of coal. However, when there is risk of loss there is also potential for gain. Contractors who are uncomfortable with site-specific risks inherent in individual reclamation contracts should not bid on the contract. The final rule is built upon the basic elements of a standard AML contract. OSM will not consider adjustments to any of these basic elements to encourage operators to undertake reclamation projects. Concerning the comment on the waiver of AML fees, the payment of AML fees has never been required of contractors extracting coal under a Section 528(2) exemption.

Another commenter suggested that it was unfair to hold the contractor responsible for completing the AML work if the project was begun with a reliance on agency estimates of coal amount, quality, location, marketability, etc., that turned out to be miscalculated or otherwise in error. The commenter also asked if OSM would amend the AML contract if any material miscalculations were discovered.

This commenter misinterprets the proposed rule to mean that contractors will have to rely upon AML estimates of amount of coal, quality of coal, etc.. Under this rule, the AML agency will establish and describe the limits of the incidental coal to be removed and any other information it has about the deposit. If the AML agency drills the site as part of its determination of what coal is incidental to the project, that information will be provided to interested contractors. But as in any arms-length transaction, it behooves both sides to assure themselves that they have sufficient accurate information to enter into a contract. Contractors submit bids based on their own cost-benefit considerations. Likewise, AML agencies select and reject bids based on whether they are in the best interest of the agency. Once a contract is executed, however, each party is bound by the terms and the conditions of the contract. Contract amendments can take place if approved by the AML agency for extraordinary circumstances. However, we stress that we see no valid reason for modifying the contract because of the contractor's incorrect estimate of either the amount of coal at the site or its ultimate value.

One commenter asserted that the determination in section 817.74(a)(1) as to the likelihood of the site being mined under a Title V permit could not properly be made outside the context of the baseline hydrologic, geologic and coal reserve information normally submitted as part of a Title V permit application.

OSM does not agree that a reasonable ''likelihood'' determination cannot properly be made on the basis of available (a)(1) information. On occasion, however, the AML agency may consider that available documentation on coal reserves needs to be augmented, for example, by the drilling of core samples. We expect that the results of such drilling would be shared with contractors.

One commenter asserted that the rule is deficient in not being ''need-tested,'' namely that there is no requirement for the ''operator'' to demonstrate that the reclamation would not otherwise be accomplished under a viable Title V operation.

OSM interprets this comment as a proposal to change the ''likelihood'' test into a ''never-ever'' test. Such a proposed limiting or narrowing of the ''likelihood'' determination would negate the very purpose of this rulemaking by discouraging reclamation under Title IV while doing nothing to increase the likelihood of reclamation under Title V. In addition, this suggestion would essentially create a requirement that a contractor know other companies' trade secrets with which it would be impossible to comply. Section 874.17(a), ''Consultation with the Title V Regulatory Authority,'' is adopted as proposed.

G. What Types of Concurrences Between the AML Agency and the Regulatory Authority Will be Required in Section 874.17(b)?

Under proposed section 874.17(b), if the AML agency would have decided to proceed with the reclamation project after consulting with the Title V regulatory authority, then the two

would have had to concur in determinations as to: (1) the extent and amount of any coal refuse, coal waste, or other coal deposits, the extraction of which would be covered by the Part 707 exemption or counterpart State and Tribal laws and regulations, and (2) the delineation of the boundaries of the AML project. These determinations primarily were intended to ensure that only the amount of coal physically needed to accomplish the reclamation is covered by the Part 707 exemption. This coal would be ''incidental'' and exempt from the reclamation fee payment.

One commenter suggested that the rule should have included a provision that allows the contractor to amend or revise the boundaries of the AML project where conditions or circumstances warrant the removal of additional coal as long as the coal is incidental to the reclamation. Another commenter suggested that a provision be included for amending the determination on the amount and extent of incidental coal if additional coal is found to be incidental to the reclamation.

OSM does not accept either of these suggestions. As with any AML reclamation project, the contractor can propose contract revisions based on unusual or unanticipated conditions experienced on the site. However, only the AML agency has the authority to revise or amend the contract. Because the AML agency already has this authority, OSM does not see the need for specifically providing for it through a new rule provision.

Two commenters suggested increasing the number and scope of the required Title V concurrences. The first proposed to replace the existing concurrence on the extent and amount of incidental coal with one on the estimated contractor revenues from the sale of that coal. This was seen as more appropriate because revenues from coal sales are to be used to offset project costs. The second comment proposed requiring Title V concurrence on all contract amendments.

OSM considered but did not accept either of these suggestions. The principal reason for involving the Title V authority in the paragraph (b)(1) concurrence process is to secure the greatest assurance that the limits of incidental coal are correctly identified. As discussed elsewhere in this rulemaking, precise estimates of contractor returns require company-specific information not available to either OSM or State authorities. All that is needed by the AML agency for the purposes of this rule is a rough estimate of contractor returns to set the range of expected contractor bids on the project. Requiring a Title V concurrence on this process is not necessary and would divert limited agency resources away from addressing more crucial information needs.

For similar reasons, OSM did not accept the second proposal that Title V concurrence be required for amendments to the reclamation contract. One of the principal purposes of the rule is secured by involving the Title V authority in the initial determination of the contract limits of incidental coal. Once this has occurred, the AML authority should have little or no difficulty when considering amendments affecting the determination of incidental coal. Requiring concurrence of the Title V authority in subsequent revisions to the contract, including adjustments to the limits of incidental coal, would be of little benefit. If the AML authority decides there is a need to discuss a contract amendment with the Title V authority, the AML authority is free to seek such advice.

Several comments focused on the language of proposed (b)(1) which would have required specification of the ''amount'' of coal that could be extracted under the Part 707 exemption. This ''amount'' specification was complicated by the language of proposed (e) which would have required a Title V permit in cases where a contractor extracts ''more coal than specified in (b)(1).'' Read together, these paragraphs appeared to require a Title V permit if more coal was extracted than the extent and amount specified in the Title IV and Title V concurrence. Commenters not only suggested that such language would require AML auditing of company books but also offered opinions on the senselessness of tonnage measurements. Other comments interpreted the proposed (b)(1) and (e) language as requiring AML audit of tonnage figures, company sales and net revenue figures.

OSM never intended the proposed paragraphs (b)(1) and (e) language to require a Title V permit for the extraction of any amount of coal that lies within the incidental coal limits specified under (b)(1). Instead, OSM intended that the language would only require a Title V permit for coal extracted beyond those limits. The ''extent'' or limits of incidental coal can reasonably be defined in terms of the dimensions of the area containing the coal. Exact determination of tonnage within these dimensions would, in most cases, be impossible to achieve prior to removing the coal.

To eliminate any ambiguities that may have appeared in the proposed (b)(1) rule language, the final rule replaces the phrase ''extent and amount'' with the word ''limits''. The remainder of section 874.17(b)(1) and (2), ''Concurrence with the Title V Regulatory Authority,'' is adopted as proposed.

Final section 874.17(b)(1) reads:

> You [the AML authority] must concur in a determination of the limits on any coal refuse, coal waste, or other coal deposits which can be extracted under the Part 707 exemption or counterpart State/Indian Tribe laws and regulations.

For information on conforming changes to section 874.17(e), see the response to question J. in Section II of this preamble: ''What must the contractor do under final section 874.17(e) if extracting coal beyond the limits of the incidental coal specified in section 874.17(b)?''

H. Under Section 874.17(c), How Will the AML Agency Document the Results of the Consultation and the Concurrences With the Title V Regulatory Authority?

Under the proposed and final rules, the AML agency documents, in the AML case file, the determinations as to the likelihood of coal at the site being mined under a Title V permit and the likelihood of interactions between AML activities and nearby or adjacent Title V activities that might create new environmental problems or adversely affect existing situations. Also, the AML agency documents the information used for making these determinations and the names of the responsible agency officials.

As we received no comments on section 874.17(c), ''Documentation,'' it is adopted as proposed.

I. What Special Requirements Will Apply for Qualifying Section 874.17(d) Reclamation Projects?

Under the proposed and final rule, section 874.17(d)(2) expressly requires that qualifying AML reclamation projects comply with provisions for State and Tribal reclamation plans and grants found at 30 CFR Subchapter R. The required compliance with Subchapter R is intended to ensure that the incidental coal extraction projects authorized under this rulemaking is accomplished in accordance with the substantial safeguards of the AML program. These safeguards include such features as: public participation and involvement; environmental evaluation to achieve compliance with the National Environmental Policy Act of 1969; and use of appropriate State or Tribal procurement procedures and regulations

as authorized under the grant common rule at 43 CFR 12.76.

Further, to provide increased protections to the AML fund and to citizens or landowners who might be affected by the project, we proposed three additional requirements to qualifying section 874.17 reclamation projects. These three proposed requirements, with only a minor wording adjustment in paragraph (d)(4) discussed below, are included in the final rule. Paragraph (d)(1) requires the AML agency to characterize the site in terms of existing hydrologic and other environmental problems. Paragraph (d)(3) requires the AML agency to develop site-specific reclamation and contractual provisions, such as performance bonds, to ensure that the reclamation is completed. And, paragraph (d)(4) requires the contractor to provide documents that authorize the extraction of the coal and commit to the payment of royalties to the mineral owner or other appropriate party.

The purpose of the (d)(4) requirement is to ensure that before a reclamation contract is awarded, there will be a valid coal lease authorizing the contractor to extract the coal. The terms of the lease will identify the party responsible for paying the royalty, the amount of the royalty, and the party receiving the royalty. To make the rule language clearer, we are including in final (d)(4) the qualifying phrase that the contractor provide, ''prior to the time reclamation begins,'' applicable documents that clearly ''commit to the payment of royalties.''

One commenter indicated that the documentation requirements of section 874.17(d) must be interpreted as requirements for the AML program and not as information to be supplied in lieu of a mining permit. The commenter reasoned that the goal of the AML program is to improve existing environmental conditions and not just to protect or preserve existing conditions. OSM agrees with the commenter on both points.

Two other commenters raised issues regarding the payment of royalties, severance taxes and related obligations. The first wanted to ensure that the AML contractor secure a mineral lease and/or pay associated royalties, particularly for Federal and State coal. The second raised the question of the proof of payment for such ''other'' fees as severance and black lung taxes.

In response to both these commenters, we emphasize, as we have done in the proposed rule and elsewhere in this final rule, that this rulemaking is not intended to change, alter, or supersede any other Federal or State laws, regulations, or requirements that apply to all AML reclamation projects. The requirement for a Federal or State lease and the payment of Federal or State royalties is unaffected by this rule. Also, any requirements for proof of payment for severance and black lung fees—fees which are not required under SMCRA—are unaffected by this rule.

A final commenter raised the question of whether the (d)(4) documentation authorizing coal extraction (*e.g.*, a lease) would be required before or after project bid submission. OSM believes that requiring the paragraph (d)(4) documentation before the reclamation actually begins will provide the greatest latitude to parties interested in bidding on the AML reclamation projects. As indicated earlier, we have further revised final (d)(4) to include the qualifying phrase ''prior to the time reclamation begins'' to reflect this intention. In all other ways, final section 874.17(d), ''Special requirements,'' is adopted as proposed and now reads:

(d) *Special requirements.* For each project, you must:

(1) Characterize the site in terms of mine drainage, active slides and slide-prone areas, erosion and sedimentation, vegetation, toxic materials, and hydrologic balance;

(2) Ensure that the reclamation project is conducted in accordance with the provisions of 30 CFR Subchapter R;

(3) Develop specific-site reclamation requirements, including performance bonds when appropriate in accordance with State procedures; and

(4) Require the contractor conducting the reclamation to provide prior to the time reclamation begins applicable documents that clearly authorize the extraction of coal and payment of royalties.

J. What Must the Contractor do Under Final Section 874.17(e) if Extracting Coal Beyond the Limits of the Incidental Coal Specified in Section 874.17(b)?

In proposed and final section 874.17(e), the contractor is required to obtain a permit under Title V for the extraction of any coal not included in the paragraph (b)(1) Part 707 exemption. Such coal is not incidental to the AML reclamation project and thus is subject to all the regulatory requirements of Title V.

One commenter asked what OSM would do if, after a contract is signed, the lessor and contractor wanted to take out additional coal underlying the coal determined to be incidental to the project and possibly provide more complete reclamation in the process. Would OSM consider the additional coal extending beyond the established project limits to be incidental because its removal could improve the reclamation, or would OSM consider the coal non-incidental and expect the contractor to obtain a Title V permit?

This is an important issue, and we want to clarify how it must be addressed under the final rule. All coal extracted beyond the limits of the incidental coal identified in the AML contract, regardless of where it is found relative to the incidental coal, is subject to Title V requirements, including obtaining a permit and payment of reclamation fees. Once the contractor begins work on the project and the AML authority subsequently determines that additional coal is incidental to the project, the contract could be amended to include the additional coal. The standard for determining incidental coal is always whether removal or extraction is physically necessary to accomplish the reclamation of the approved AML construction project. This standard must be applied in the initial contract determination and in any amendments that change the contract limits of incidental coal. Any coal whose removal or extraction is not physically necessary to complete the reclamation is not incidental to that project—even if such removal and sale would reduce the overall cost of the reclamation to the government.

One commenter suggested that the preamble discussion in the proposed rule (question K. in Section II of the preamble to the proposed rule) providing for contract remedies against AML projects for the extraction of coal outside of the section 874.17(b)(1) project limits, conflicted with the proposed rule language of section 874.17(e) requiring a Title V permit for such extraction. While several commenters read the proposed rule language of paragraphs (b)(1) and (e) as establishing a tonnage limit on the amount of incidental coal that could be extracted from the AML project (with a Title V permit being required for coal exceeding the tonnage limit), most commenters appeared to correctly interpret these paragraphs to mean that the limits on incidental coal would be identified and described in terms of dimensions of the area containing the coal. A Title V permit would not be needed to extract coal within these prescribed limits, regardless of how much coal is extracted or the quality and value of the coal. To make it clear in this final rule that paragraph (e) requires a Title V permit only for the extraction of coal beyond the paragraph (b)(1) limits, we are making the following clarifying changes to that paragraph.

Final paragraph (e) replaces the word ''more'' in front of the word ''coal'' with the phrase ''beyond the limits of the incidental [coal].'' The rule language concludes with the addition of the new phrase ''for such coal.'' This change should clarify that extraction of coal beyond that which has been determined to be incidental to the project under (b)(1) is unauthorized and, thus, requires a Title V permit. At the same time coal extracted within the (b)(1) limits, regardless of how much or how valuable, is incidental and, therefore, authorized under the project.

Final section 874.17(e) reads:

If the reclamation contractor extracts coal beyond the limits of the incidental coal specified in paragraph (b)(1) of this section, the contractor must obtain a permit under Title V of SMCRA for such coal.

Two commenters suggested an auditing or final adjusting of contract cost to net revenues in lieu of the proposed regulatory requirement to seek a Title V permit if the contractor extracts more coal than authorized in the AML contract. One of the commenters believed that this was fairer, more effective and would not halt the AML project if the contractor could not obtain a permit or delay it until such time as the contractor obtained a permit. These and other commenters proposed alternative remedies, procedures, and sanctions to the paragraph (e) requirement that a contractor obtain a Title V permit for extraction of coal beyond the incidental coal limits of (b)(1).

As previously mentioned, OSM recognizes that there are times that unintended and extremely limited extraction of coal may occur beyond prescribed (b)(1) limits. To the extent that such coal is less than 250 tons, the extraction may be exempt from regulation under the Title V permitting requirement at 30 CFR 700.11(a)(2). Failing that exemption, the Act allows no leeway in the requirement for Title V permitting. To be reasonably assured that coal removal will not exceed the incidental coal limits of (b)(1), contractors should design projects accurately and precisely and pay close attention to project boundaries and incidental coal limits when undertaking the project.

We note that the paragraph (e) requirement that the contractor must obtain a Title V permit does not preclude the AML agency from imposing contract sanctions under the Title IV program if the contractor breaches the conditions of the contract. As indicated in the preamble discussion following question K. in Section II of the proposed rule, AML contractors removing coal beyond the limits authorized by the AML project could be subject to a wide range of remedies for breach of contract. Such sanctions are already available to the Title IV agency to use at its discretion to ensure that reclamation is conducted fully in accordance with applicable laws, regulations and contract requirements. Indeed, when a contractor clearly exceeds the (b)(1) incidental coal limits, OSM expects that the AML agency would impose appropriate sanctions, as well as refer the matter to Title V authorities for appropriate action. Hence, we have not adopted any of the suggested rule changes that would have limited the available remedies or sanctions.

K. How Does This Rulemaking Relate to the Established AML Priority System for Selecting Projects?

OSM received several comments concerning the relationship to the priorities established in Section 403 of SMCRA relative to projects involving the incidental recovery of coal. One of these commenters encouraged OSM to add a paragraph (d) under section 874.17 titled ''Project Priority,'' the purpose of which would be to remind the States that the selection of projects shall reflect the priorities outlined in Section 403 of SMCRA regardless of whether or not there is coal recovery potential. This commenter suggested that such an advisory statement would help States defend their project selection process against political or business pressure to fund certain sites with coal recovery potential. At the same time, the commenter suggested, an advisory statement would not preclude States from approving low priority projects where coal recovery potential allows reclamation to be performed at little or no cost to the government.

Another commenter indicated that the discussion in our proposal (63 FR 34770; June 25, 1998) suggested that the AML agency could select sites independent of the priority ranking. The commenter recommended that OSM clarify that the rule provides the State AML agency with the authority to depart from the priority system in order to speed approval of the incidental coal removal projects developed under this rule.

A third commenter was encouraged by OSM's recognition that the types of AML projects likely to attract most attention under this rule are those listed as priority 3 under Section 403 of SMCRA. This same commenter was encouraged again that the rule does not mandate that the States approve all AML projects presented to them which involve less than 50 percent government funding.

OSM certainly did not intend by anything said in its proposed rule to suggest that States disregard the established priority system. In our proposed rule, we expressly stated that, ''The AML agency selects individual sites from the AML Inventory using its priority system.'' (63 FR 34771; June 25, 1998).

OSM further does not believe that there is need to add an advisory regulation to clarify the priority structure. Projects done under authority of this rule will not differ from any other AML project with regard to Section 403 of SMCRA. The States have been administering quality AML programs since the early 1980's. Political or business pressure in project selection has always been part of the process, and there is every reason to believe that such pressure can be expected here. While individual projects selected may be priority 1, 2 or 3, depending on the State's needs and the amount of AML reclamation remaining to be done, individual projects are approvable as long as they reflect, within the context of other AML projects, the priorities outlined in Section 403. States will retain the maximum discretion in choosing AML projects consistent with their current authority in Section 403.

One commenter believed that OSM's statement that, ''The proposal was not intended to address project sites involving redisturbance and subsequent reclamation of abandoned mine lands, such as highwalls and outslopes that have become environmentally stable over the years and pose no other problems'' provides a significant obstacle to reducing the current AML inventory through reclamation. OSM disagrees with the commenter. Section 403 of SMCRA states that, in addition to the eligibility criteria for AML reclamation found at Section 404, sites must meet one of the priorities at Section 403. If an abandoned mine site has become stable over the years, it would not meet the priorities in Section 403 and it would not be subject to expenditures from the AML fund. Such a site could properly be removed from the inventory at the State's discretion.

L. Is This Rulemaking Really More About Remining than AML Reclamation?

No. The three commenters opposing the rule asserted that it was a thinly veiled remining incentive. They uniformly decried what they perceived to be the loss of Title V remining

protections for operations that they suggested would be conducted as Title IV reclamation projects under this rule. Much of commenters' concerns centered on their assertion that the rule would lead to administrative abuse and operate as a remining incentive. One of the three commenters asserted that the rule was a remining incentive because it would lead to ''coal mining for commercial profit'' as part of a government-financed operation.

OSM has already addressed commenters' concerns about abuse of the rule in Section II.E. of this preamble. With regard to the commenter's concern that the rule would serve as a remining incentive because it would lead to ''coal mining for commercial profit,'' we note that Section 528(2) exempted operations can include the extraction of coal for commercial profit. Profit is not in conflict with the goal or intent of Section 528(2). This rule is not a remining incentive. It is intended to encourage the reclamation at AML-eligible sites that have little-to-no likelihood of ever being remined.

The commenter's concern that operators might ''mine'' coal for ''commercial profit'' under this rule is balanced by industry commenters' often voiced concern over the same potential for ''commercial loss.'' As under any AML reclamation contract, whether or not it involves the extraction of coal, there will always be an element of risk for the bidding party. OSM neither guarantees a profit nor insures against a loss for reclamation contracts. OSM's primary interest, particularly for the reclamation conducted under this rule, is in negotiating a contract that reflects a savings from the anticipated program costs of reclaiming the site and burying or disposing of the incidental coal deposits. Such savings will in turn be used to reclaim other eligible sites.

This same commenter challenged the justification for the rule on the basis of ''remining incentives'' already on the books. The commenter cited: (1) the Clean Water Act Reauthorization of 1978, and (2) the Energy Policy Act of 1992. Effective as these incentives may have been in encouraging Title V remining, substantial acreage remains unremined with little likelihood of being remined under existing regulations. It is these sites that this final rule targets for Title IV reclamation.

The same commenter also characterized the rule as using AML funds to improperly subsidize the remining industry. The commenter cited Congress' prior rejection of such a subsidy in the legislative history of the Energy Policy Act of 1992. Although no specific citation was provided, the commenter probably was referring to the provisions of House Bill 4053, which created a State remining insurance fund derived mainly from AML monies. This fund would have assumed a Title V permittee's liability for correcting environmental problems that resulted from unanticipated events or conditions. H.R. 4053, 101st Cong. § 422 (1990). The concern expressed in hearings over these provisions was that a few problem sites could deplete the entire fund. Coal Remining: Hearings on H.R. 2791 and 4053 before the Subcommittee on Mining and Natural Resources, 101st Cong. at 181,187 (1990) (Statements of Dave Rosenbaum and Nick J. Rahall.)

Beyond the fact that the present rule concerns Title IV reclamation and not Title V remining, we note that the rule does not threaten to exhaust AML funds on Title V reclamation, but rather is a means of maximizing existing AML funds for Title IV reclamation. It could be better said that this rule does not subsidize industry but, under controlled parameters, uses industry to subsidize AML reclamation.

Another commenter suggested that the proposal be withdrawn and that OSM explore other approaches to the creation of ''remining'' incentives. Several incentives were proposed which, because they dealt with remining and not AML reclamation projects, were beyond the scope of this rulemaking. We note, however, that the commenter's suggested remining incentives (1) would require congressional action in the form of statutory changes or appropriations, or (2) were conditioned with such caveats so as to render them ineffective as incentives to the coal industry. These recommended incentives highlight the difficulty encountered over the last twenty years by industry, OSM, and the environmental community in developing meaningful, environmentally protective, mutually supportable remining incentives. As a result, an enormous number of disturbed sites have yet to be remined and reclaimed under Title V. We are promulgating the current rule in an effort to encourage the Title IV reclamation of some of those sites.

Following the prior theme from commenters that the rule is not a reclamation procedure but a remining incentive, one commenter listed seven areas in which projects authorized under this rule, although providing Title IV protections, did not provide Title V level protections. This less than Title V level of protection is not unexpected considering that projects authorized under this final rule are AML reclamation projects and not Title V activities. AML reclamation has been successfully performed under SMCRA for 20 years complying with numerous AML program and AML contract safeguards. The commenter has, in effect, made a broad sweeping condemnation of the AML procedures inherent to all reclamation projects, including those that would be initiated under the scope of this final rule. At the same time, despite OSM's detailed explanations of the safeguards in the preamble to the proposed rule, the commenter did not specifically cite which AML safeguards are deficient or have proved inadequate in the past and did not offer suggestions on how they could be strengthened.

M. Other Comments

One commenter supporting the rule characterized it as a further step in implementing primacy under SMCRA. This commenter correctly noted that a State's adoption of this rule and the resulting change in reach of its AML program is optional. Each State is free to manage its AML program in light of its particular needs and resources.

The three commenters categorically opposing the rule also attacked it as lacking adequate justification. Two of the commenters asserted that OSM was not justified in seeking new ways of funding the reclamation of acreage that otherwise would not be reclaimed because there was still a ''significant sum of [AML] money unexpended in the treasury and unrequested by OSM.'' The commenters were referring to the unappropriated balance in the AML Fund—more than $1 billion collected in AML fees and deposited in the Fund but not appropriated by Congress for reclamation. These and other commenters expressed support for making all Fund money available for reclamation.

This comment is outside of the scope of this rulemaking, and it refers both to an agency budget request and a congressional appropriation process over which OSM has little control. Further, if every dollar in the Fund were to be appropriated for reclamation, it would not come close to satisfying the reclamation need. Even if the entire Fund became available for reclamation, this final rule would still be necessary.

One of these commenters stated that OSM had not provided any figures showing how many additional abandoned mines would be reclaimed under the proposal and demonstrating that the rule would have tangible environmental benefits. While projections of the exact number of sites

that would be reclaimed as a result of this new rule cannot be reliably made, OSM has information from 15 States that collectively estimated that a range of from 32 to 80 sites per year could be reclaimed under this rule.

One commenter asked for confirmation that the proposed change in the definition at section 707.5 would not affect the review responsibility to identify historic properties and effects under 36 CFR 800. That commenter also suggested that it would be helpful to consider coordination measures for AML and regulatory agencies to perform the needed reviews and to avoid redundancy. This rule does not change any existing requirements in the Title IV AML program or procedures and thus will not change existing review requirements for historic properties. Changes in coordination procedures, if any, will be left to the discretion of the individual States.

One commenter expressed the idea that the enhanced reclamation scope of the rule leaves open for interpretation and possible reevaluation of the procedures for State contracting and bonding. Again, we emphasize that reclamation projects covered under the scope of this rule making are intended to be accomplished within existing AML processes and procedures. This final rule does not change, alter or supercede any other Federal or State laws, regulations or requirements that would otherwise apply to the AML projects. At the same time, it does not preclude States from revising any procedures in order to better implement the provisions of this final rule.

III. Procedural Determinations

1. Executive Order 12866—Regulatory Planning and Review

This document is a significant rule and has been reviewed by the Office of Management and Budget under Executive Order 12866.

a. This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities.

b. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

c. This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

d. This rule does raise novel policy issues.

2. Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The rule, when implemented, should slightly improve business opportunities for all entities, small and large, by increasing the likelihood that between 32 and 80 additional reclamation projects will be undertaken each year. In February 1997, a survey of 15 States, conducted by the National Association of Abandoned Mine Land Programs, indicated that if the proposal were implemented, 13 States intended to use the provisions to achieve reclamation of problem areas such as coal refuse, dangerous highwalls, AMD, and subsidence. Of those States, 12 anticipated one to five projects per year, while one State anticipated 20 or more. Therefore, OSM estimates a range of from 32–80 additional projects per year that will be undertaken as a result of the new rule. In calendar year 1997, there were 476 AML reclamation projects approved and in calendar year 1998, there were 460. This results in an average of 468 projects per year for this two year period. Therefore, it is anticipated that the average number of AML projects under the new rule will increase from 468 to a low of 500 and a high of 548 projects per year, or an increase of between 6.8 and 17.1 percent.

Data from OSM's electronic Applicant Violator System indicates that since July 1994, we have cleared approximately 724 businesses as contractors for AML reclamation projects. While it is likely that some of the 724 business were coal mining companies which we classify as small businesses under the Small Business Administration (SBA) criteria, some were also construction companies, landscape companies, and other types of businesses with the heavy equipment necessary to reclaim an abandoned coal mine site. Since we do not collect data on the nature of the businesses bidding on reclamation projects, the number of employees they have, or their annual receipts in millions of dollars, we are unable to determine how many of the 724 would qualify as small businesses under the SBA criteria at 13 CFR 121.201. However, given a maximum increase of 80 new projects undertaken each year and a potential bidding pool of over 724 distinct businesses from various industries, it is unlikely that the rule will have an impact on a substantial number of small businesses.

The economic impact of the rule on small businesses is expected to be minimal. This determination is based on the following facts:

—The rule will not increase the cost or burden on businesses reclaiming sites eligible under the existing regulations;

—The rule merely makes possible for businesses to undertake the reclamation of areas not previously remined or reclaimed under existing regulations;

—The undertaking of the discreet reclamation projects opened up by this new rule is entirely voluntary; and

—The only increase in cost due to these new projects will be that for documentation related to the removal and sale of coal as an incidental part of the reclamation project.

This incremental cost will be factored into the cost of the project bid submitted to the Title IV governmental authority and should prove to be an insignificant percentage of the total bid. None of the comments from businesses complained that the rule imposed additional burdens on doing business. Instead, business commented that the rule did not go far enough in encouraging the reclamation of eligible sites. Those who do participate and bid on reclamation projects resulting from the new rule will do so to reap an economic benefit in the form of a profit on the sale of coal incidentally mined during the reclamation of the site. The total amount of Federal money that will be available each year for AML projects will neither increase nor decrease as a result of this rule.

3. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more. It would allow AML agencies to work in partnership with contractors to leverage finite AML Reclamation Fund dollars to accomplish more reclamation. To offset the reduction in government funding, the contractor would be allowed to sell coal found incidental to the project and recovered as part of the reclamation. Participation under the rule change is strictly voluntary and those participating are expected to do so because of the economic benefit.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions because the rule

does not impose any new requirements on the coal mining industry or consumers, and State and Indian AML program administration is funded at 100 percent by the Federal government.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises for the reasons stated above.

4. Unfunded Mandates

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or Tribal governments or the private sector. The administration of the AML program by a State or Indian Tribe is funded at 100 percent by the Federal Government and the decision by a State or Indian Tribe to participate is voluntary. A statement containing the information required by the Unfunded Mandates Reform Act (1 U.S.C. 1531, *et seq.*) is not required.

5. Executive Order 12630—Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. The rule would allow AML agencies to work in partnership with contractors to leverage finite AML Reclamation Fund dollars to accomplish more reclamation. To offset the reduction in government funding, the contractor would be allowed to sell coal found incidental to the project and recovered as part of the reclamation.

6. Executive Order 12612—Federalism

In accordance with Executive Order 12612, the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment for the reasons discussed above.

7. Executive Order 12988—Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

8. Paperwork Reduction Act

Under the Paperwork Reduction Act, agencies may not conduct or sponsor a collection of information unless the collection of information displays a currently valid Office of Management and Budget (OMB) control number. Also, no person is required to respond to an information collection request unless the form or regulation requesting the information has a currently valid OMB control number. Therefore, in accordance with 44 U.S.C. 3501 *et seq*, OSM submitted the information collection and record keeping requirements of 30 CFR Part 874 to OMB for review and approval. OMB approved the collection activity for Part 874 and assigned it OMB control number 1029–0113. This control number will appear in section 874.10. To obtain a copy of OSM's information collection clearance authority, explanatory information, and related form, contact John A. Trelease at (202) 208–2783 or by e-mail at jtreleas@osmre.gov.

9. National Environmental Policy Act

OSM has prepared an environmental assessment (EA) of this rule and has made a Finding of No Significant Impact (FONSI) on the quality of the human environment under Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. Section 4332(2)(C). The EA and FONSI are on file in the OSM Administrative Record for the rule.

Authors: D.J. Growitz and Danny Lytton, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, N.W., Washington, D.C. 20240.

List of Subjects

30 CFR Part 707

Highways and roads, Incidental mining, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 874

Reclamation, Surface mining, Underground mining.

Dated: December 21, 1998.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

For the reasons given in the preamble, 30 CFR Parts 707 and 874 are amended as set forth below:

PART 707—EXEMPTION FOR COAL EXTRACTION INCIDENT TO GOVERNMENT-FINANCED HIGHWAY OR OTHER CONSTRUCTION

1. The authority citation for Part 707 continues to read as follows:

Authority: Secs. 102, 201, 501, and 528 of Pub. L. 95–87, 91 Stat. 448, 449, 467, and 514 (30 U.S.C. 1202, 1211, 1251, 1278).

2. In § 707.5, the definition of *Government-financed construction* is revised to read as follows:

§ 707.5 Definitions.

* * * * *

Government-financed construction means construction funded 50 percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds. Funding at less than 50 percent may qualify if the construction is undertaken as an approved reclamation project under Title IV of the Act. Construction funded through government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments does not qualify as government-financed construction.

3. Section 707.10 is revised to read as follows:

§ 707.10 Information collection.

Since the information collection requirement contained in 30 CFR 707.12 consists only of expenditures on information collection activities that would be incurred by persons in the normal course of their activities, it is exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and does not require clearance by OMB.

PART 874—GENERAL RECLAMATION REQUIREMENTS

4. The authority citation for Part 874 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended.

5. Section 874.10 is added to read as follows:

§ 874.10 Information collection.

(a) In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of this part. The OMB clearance number is 1029–0113. This information is needed to ensure that appropriate reclamation projects involving the incidental extraction of coal are conducted under the authority of Section 528(2) of SMCRA and that selected projects contain sufficient environmental safeguards. Persons must respond to obtain a benefit.

(b) OSM estimates that the public reporting burden for this part will average 60 hours per project, including time spent reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of these information collection requirements, including suggestions for reducing the

burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, 1951 Constitution Avenue, N.W., Washington, DC 20240; and the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503. Please refer to OMB Control Number 1029–0113 in any correspondence.

6. Section 874.17 is added to read as follows:

§ 874.17 AML agency procedures for reclamation projects receiving less than 50 percent government funding.

This section tells you, the AML agency, what to do when considering an abandoned mine land reclamation project as government-financed construction under Part 707 of this chapter. This section only applies if the level of funding for the construction will be less than 50 percent of the total cost because of planned coal extraction.

(a) *Consultation with the Title V Regulatory Authority.* In consultation with the Title V regulatory authority, you must make the following determinations:

(1) You must determine the likelihood of the coal being mined under a Title V permit. This determination must take into account available information such as:

(i) Coal reserves from existing mine maps or other sources;

(ii) Existing environmental conditions;

(iii) All prior mining activity on or adjacent to the site;

(iv) Current and historic coal production in the area; and

(v) Any known or anticipated interest in mining the site.

(2) You must determine the likelihood that nearby or adjacent mining activities might create new environmental problems or adversely affect existing environmental problems at the site.

(3) You must determine the likelihood that reclamation activities at the site might adversely affect nearby or adjacent mining activities.

(b) *Concurrence with the Title V Regulatory Authority.* If, after consulting with the Title V regulatory authority, you decide to proceed with the reclamation project, then you and the Title V regulatory authority must concur in the following determinations:

(1) You must concur in a determination of the limits on any coal refuse, coal waste, or other coal deposits which can be extracted under the Part 707 exemption or counterpart State/Indian Tribe laws and regulations.

(2) You must concur in the delineation of the boundaries of the AML project.

(c) *Documentation.* You must include in the AML case file:

(1) The determinations made under paragraphs (a) and (b) of this section;

(2) The information taken into account in making the determinations; and

(3) The names of the parties making the determinations.

(d) *Special requirements.* For each project, you must:

(1) Characterize the site in terms of mine drainage, active slides and slide-prone areas, erosion and sedimentation, vegetation, toxic materials, and hydrologic balance;

(2) Ensure that the reclamation project is conducted in accordance with the provisions of 30 CFR Subchapter R;

(3) Develop specific-site reclamation requirements, including performance bonds when appropriate in accordance with State procedures; and

(4) Require the contractor conducting the reclamation to provide prior to the time reclamation begins applicable documents that clearly authorize the extraction of coal and payment of royalties.

(e) *Limitation.* If the reclamation contractor extracts coal beyond the limits of the incidental coal specified in paragraph (b)(1) of this section, the contractor must obtain a permit under Title V of SMCRA for such coal.

[FR Doc. 99–3556 Filed 2–11–99; 8:45 am]

BILLING CODE 4310–05–P

federal register

Friday
February 12, 1999

Part XII

Department of the Interior

Minerals Management Service

Outer Continental Shelf, Central Gulf of Mexico, Oil and Gas Lease Sale 172; Notice

Outer Continental Shelf, Central Gulf of Mexico; Bidding Systems, Sale 172; Notice

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Central Gulf of Mexico, Oil and Gas Lease Sale 172

ACTION: Final notice of sale 172.

On March 17, 1999, the Minerals Management Service (MMS) will open and publicly announce bids received for blocks offered in Sale 172, Central Gulf of Mexico, pursuant to the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331–1356, as amended) and the regulations issued thereunder (30 CFR Part 256). Bidders can obtain a ''Final Notice of Sale 172 Package'' containing this Notice of Sale and several supporting and essential documents referenced herein, from the MMS Gulf of Mexico Region's Public Information Unit, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, (504) 736–2519 or (800) 200–GULF, or via the MMS Gulf of Mexico Region's Internet site at http://www.gomr.mms.gov. The MMS also maintains a 24-hour Fax-on-Demand Service at (202) 219–1703. The ''Final Notice of Sale 172 Package'' contains information essential to bidders, and bidders are charged with the knowledge of the documents contained in the package.

Location and Time

Public bid reading will begin at 9 a.m., Wednesday, March 17, 1999, at the Hyatt Regency Conference Center (Cabildo Rooms), 500 Poydras Plaza, New Orleans, Louisiana. All times referred to in this document are local New Orleans time.

Filing of Bids

Bidders must submit sealed bids to the Regional Director (RD), MMS Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, during normal business hours (8 a.m. to 4 p.m.) prior to the Bid Submission Deadline at 10 a.m., Tuesday, March 16, 1999. If the RD receives bids later than the time and date specified above, he will return the bids unopened to bidders. Bidders may not modify or withdraw their bids unless the RD receives a written modification or written withdrawal request prior to 10 a.m., Tuesday, March 16, 1999. In the event of widespread flooding or other natural disaster, the MMS Gulf of Mexico Regional Office may extend the bid submission deadline. Bidders may call (504) 736–0537 for information about the possible extension of the bid submission deadline due to such an event.

Areas Offered for Leasing

The MMS is offering for leasing all the blocks and partial blocks listed in the document ''Blocks Available for Leasing in Gulf of Mexico OCS Oil and Gas Lease Sale 172'' included in the Sale Notice Package. All of these blocks are shown on the following Leasing Maps and Official Protraction Diagrams (which may be purchased from the MMS Gulf of Mexico Regional Office Public Information Unit).

Outer Continental Shelf Leasing Maps—Louisiana Nos. 1 through 12. This is a set of 30 maps which sells for $32.

Outer Continental Shelf Official Protraction Diagrams (these diagrams sell for $2.00 each):

NH 15–12 Ewing Bank (rev. 12/02/76).
NH 16–4 Mobile (rev. 02/23/93).
NH 16–7 Viosca Knoll (rev. 12/02/76).
NH 16–10 Mississippi Canyon (rev. 05/01/96).
NG 15–3 Green Canyon (rev. 12/02/76).
NG 15–6 Walker Ridge (rev. 12/02/76).
NG 15–9 (No Name) (rev. 04/27/89).
NG 16–1 Atwater Valley (rev. 11/10/83).
NG 16–4 Lund (rev. 08/22/86).
NG 16–7 (No Name) (rev. 04/27/89).

Acreage of all blocks is shown on these Leasing Maps and Official Protraction Diagrams. Available Federal acreage of blocks available in this sale is shown in the document ''Blocks Available for Leasing in the Central Gulf of Mexico OCS Oil and Gas Lease Sale 172'' included in the Sale Notice Package. Some of these blocks may be partially leased or transected by administrative lines such as the Federal/State jurisdictional line. Information on the unleased portions of such blocks, including the exact acreage, is found in the document titled ''Central Gulf of Mexico Lease Sale 172—Unleased Split Blocks and Unleased Acreage of Blocks with Aliquots and Irregular Portions Under Lease,'' included in the Sale Notice Package.

Areas Not Available for Leasing

The following blocks in the Central Gulf of Mexico Planning Area are not available for leasing:

Blocks currently under lease; and the following unleased blocks or partial blocks:

Main Pass Area, South and East Addition, Blocks 253 and 254; and Viosca Knoll Blocks 213 and 256 (which are currently under appeal); and the following blocks which are beyond the United States Exclusive Economic Zone and have been temporarily deferred from leasing by the Department of the Interior due to ongoing negotiations with the Government of Mexico:

Area NG 15–9

Blocks
133 through 135
177 through 184
221 through 238
265 through 281
309 through 320
358

Area NG 16–7

Blocks
172, 173
213 through 217
252 through 261
296 through 305
349

Leasing Terms and Conditions

Primary lease terms, minimum bids, annual rental rates, royalty rates, and royalty suspension areas are shown on the map ''Lease Terms and Economic Conditions, Sale 172, Final'' for leases resulting from this sale:

Primary lease terms: 5 years for blocks in water depths of less than 400 meters; 8 years for blocks in water depths of 400 to 799 meters; and 10 years for blocks in waters depths of 800 meters or deeper;

Minimum bids: $25 per acre or fraction thereof for blocks in water depths of less than 800 meters and $37.50 per acre or fraction thereof for blocks in water depths of 800 meters or deeper (the minimum bid for each available block has been calculated and is shown in the document ''Blocks Available for Leasing in Gulf of Mexico OCS Oil and Gas Lease Sale 172'' included in the Sale Notice Package);

Annual rental rates: $5 per acre or fraction thereof for blocks in water depths of less than 200 meters and $7.50 per acre or fraction thereof for blocks in water depths of 200 meters or deeper, until initial production is obtained;

Royalty rates: 16⅔% royalty rate for blocks in water depths of less than 400 meters and a 12½% royalty rate for blocks in waters depths of 400 meters or deeper, except during periods of royalty suspension;

Royalty Suspension Areas: Royalty suspension *may* apply for blocks in water depths of 200 meters or deeper; see the map for specific areas. See 30 CFR 203 for the final rule specifying royalty suspension terms.

The map titled ''Stipulations and Deferred Blocks, Sale 172, Final'' depicts the blocks where the Topographic Features, Live Bottoms, Military Areas, and Blocks South of Baldwin County, Alabama, stipulations apply. The texts of the lease stipulations

are contained in the document ''Lease Stipulations for Oil and Gas Lease Sale 172, Final'' included in the Final Sale Notice Package. Also shown on this map are the deferred blocks noted above.

Rounding

The following procedure must be used to calculate minimum bid, rental, and minimum royalty on blocks with fractional acreage: Round up to the next whole acre and multiply by the applicable dollar amount to determine the correct minimum bid, rental, or minimum royalty.

Note: For the minimum bid only, if the calculation results in a decimal figure, round up to the next whole dollar amount (see next paragraph). The minimum bid calculation, including all rounding, is shown in the document ''Blocks Available for Leasing in Gulf of Mexico OCS Oil and Gas Lease Sale 172'' included in the Sale Notice Package.

Method of Bidding

For each block bid upon, a bidder must submit a separate signed bid in a sealed envelope labeled ''Sealed Bid for Oil and Gas Lease Sale 172, not to be opened until 9 a.m., Wednesday, March 17, 1999.'' The total amount bid must be in a whole dollar amount; any cent amount above the whole dollar will be ignored by the MMS. Details of the information required on the bid(s) and the bid envelope(s) are specified in the document ''Bid Form and Envelope'' contained in the Sale Notice Package. The MMS published a list of restricted joint bidders, which applies to this sale, in the **Federal Register** at 63 FR 53097, on October 2, 1998. Bidders must execute all documents in conformance with signatory authorizations on file in the MMS Gulf of Mexico Regional Office. Partnerships also must submit or have on file a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places, e.g., 33.33333 percent. The MMS may require bidders to submit other documents in accordance with 30 CFR 256.46. The MMS warns bidders against violation of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders. Bidders are advised that the MMS considers the signed bid to be a legally binding obligation on the part of the bidder(s) to comply with all applicable regulations, including paying the ⅕th bonus on all high bids. A statement to this effect must be included on each bid (see the document ''Bid Form and Envelope'' contained in the Sale Notice Package).

Bid Deposit

Bidders will have the option of submitting the ⅕th cash bonus by cashier's check, bank draft, or certified check with the bid, or by using electronic funds transfer (EFT) procedures. Detailed instructions for submitting the ⅕th bonus payment by EFT are contained in the document ''Instructions for Making EFT ⅕th Bonus Payments'' included in the Sale Notice Package. Any payments will be deposited by the Government in an interest-bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

Withdrawal of Blocks

The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

Acceptance, Rejection, or Return of Bids

The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any block will be awarded to any bidder, unless the bidder has complied with all requirements of this Notice, including the documents contained in the associated Sale Notice Package and applicable regulations; the bid is the highest valid bid; and the amount of the bid has been determined to be adequate by the authorized officer. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, and other applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance. To ensure that the Government receives a fair return for the conveyance of lease rights for this sale, high bids will be evaluated in accordance with MMS bid adequacy procedures. A copy of the current procedures (''Summary of Procedures for Determining Bid Adequacy at Offshore Oil and Gas Lease Sales: Effective March 1999, with Sale 172'') is available from the MMS Gulf of Mexico Regional Office Public Information Unit.

Successful Bidders

The MMS will require each person who has submitted a bid accepted by the authorized officer to execute copies of the lease (Form MMS–2005 (March 1986) as amended), pay the balance of the cash bonus bid along with the first year's annual rental for each lease issued by EFT in accordance with the requirements of 30 CFR 218.155, and satisfy the bonding requirements of 30 CFR 256, Subpart I, as amended. Each person involved as a bidder in a successful high bid must have on file, in the MMS Gulf of Mexico Regional Office Adjudication Unit, a currently valid certification that the person is not excluded from participation in primary covered transactions under Federal nonprocurement programs and activities. A certification previously provided to that office remains currently valid until new or revised information applicable to that certification becomes available. In the event of new or revised applicable information, the MMS will require a subsequent certification before lease issuance can occur. Persons submitting such certifications should review the requirements of 43 CFR, Part 12, Subpart D. A copy of the certification form is contained in the Sale Notice Package.

Equal Opportunity

The certification required by 41 CFR 60–1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form MMS–2033 (June 1985), and the Affirmative Action Representation Form, Form MMS–2032 (June 1985) must be on file in the MMS Gulf of Mexico Regional Office prior to lease award.

Information to Lessees

The Sale Notice Package contains a document titled ''Information to Lessees.'' These Information to Lessees items provide information on various matters of interest to potential bidders.

Cynthia Quarterman,

Director, Minerals Management Service.

Approved: February 10, 1999.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

[FR Doc. 99–3729 Filed 2–11–99; 9:48 am]

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Central Gulf of Mexico; Notice of Bidding Systems, Sale 172

Notice of Bidding Systems

Section 8(a)(8) (43 U.S.C. 1337(a)(8)) of the Outer Continental Shelf Lands Act (OCSLA) requires that, at least 30 days before any lease sale, a Notice be submitted to the Congress and published in the **Federal Register**.

This Notice of Bidding Systems is for Sale 172, Central Gulf of Mexico, scheduled to be held in March 1999, as well as for all future sales, until and unless notice is given that an alternative system will be adopted.

The Minerals Management Service has mainly used the cash bonus bid with a fixed royalty rate since 1978. The 1978 law requiring notice of the bidding systems and the rationale behind each system anticipated the use of many different systems. We have determined, and explained previously, that the system currently in use best meets our mission objectives. Unless the MMS publishes a Notice announcing use of a different bidding system, we will continue to use the cash bonus/fixed royalty rate system for future sales. The specific blocks offered under each system will be shown on the ''Lease Terms and Economic Conditions'' map that is prepared for each lease sale.

Cynthia Quarterman,

Director, Minerals Management Service.

Approved: February 10, 1999.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

[FR Doc. 99–3730 Filed 2–11–99; 9:48 am]

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT FEBRUARY 12, 1999

AGRICULTURE DEPARTMENT

Grain Inspection, Packers and Stockyards Administration

Fees:
- Official inspection and weighing services
  - Correction; published 2-11-99

Grain standards:
- Barley
  - Correction; published 2-11-99

COMMERCE DEPARTMENT

Economic Development Administration

Economic Development Reform Act of 1998; implementation; published 2-3-99

COMMODITY FUTURES TRADING COMMISSION

Registration:
- Associated persons, floor brokers, floor traders and guaranteed introducing brokers; temporary licenses; published 1-12-99

ENVIRONMENTAL PROTECTION AGENCY

Superfund program:
- Emergency Planning and Community-Right-To-Know Act—
  - Hazardous chemical reporting thresholds; published 2-11-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:
- Animal food definitions and standards; CFR part removed
  - Correction; published 2-11-99

Medical devices:
- Manufacturers and initial importers of devices; establishment registration and device listing
  - Correction; published 11-27-98
  - Effective date confirmation; published 1-12-99

POSTAL SERVICE

Domestic Mail Manual:
- Rural and highway contract delivery routes; shared mail receptacles; addressing requirements; published 1-13-99

SECURITIES AND EXCHANGE COMMISSION

Securities:
- Operating segments; financial reporting requirements; published 1-12-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Boeing; published 1-7-99

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Pipeline safety:
- Hazardous liquid transportation—
  - Older hazardous liquid and carbon dioxide pipelines; pressure testing within terminals and tank farms; correction; published 2-11-99

TREASURY DEPARTMENT

Customs Service

Merchandise remaining at place of arrival or unlading beyond lay order period; general order; penalties for failure to notify Customs; correction; published 2-11-99

TREASURY DEPARTMENT

Government Securities Act; implementation:
- Brokers and dealers reporting requirement; Year 2000 compliance; published 1-12-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:
- African horse sickness; disease status change—
  - Qatar; comments due by 2-16-99; published 1-14-99

Plant-related quarantine, domestic:
- Karnal bunt disease—
  - Compensation; comments due by 2-16-99; published 12-17-98

Plant-related quarantine, foreign:
- Solid wood packing material from China; comments due by 2-16-99; published 12-17-98

AGRICULTURE DEPARTMENT

Rural Utilities Service

Telecommunications standards and specifications:
- Materials, equipment, and construction—
  - Customer access locations; service installation standard; comments due by 2-19-99; published 12-21-98

COMMERCE DEPARTMENT

Economic Analysis Bureau

International services surveys:
- Foreign direct investments in U.S.—
  - Annual survey; exemption levels; comments due by 2-16-99; published 1-14-99

COMMERCE DEPARTMENT

Export Administration Bureau

Encryption items; comments due by 2-16-99; published 12-31-98

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Fishing participation credit; comments due by 2-18-99; published 1-19-99
- Caribbean, Gulf, and South Atlantic fisheries—
  - Gulf of Mexico reef fish; comments due by 2-16-99; published 12-18-98

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):
- Historically underutilized business zone (HUBZone) empowerment contracting program; comments due by 2-16-99; published 12-18-98

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Consumer products; energy conservation program:
- Clothes washers—
  - Energy conservation standards; comments due by 2-16-99; published 1-11-99

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
- Oil and natural gas production and natural gas transmission and storage; comments due by 2-16-99; published 1-15-99

Air pollution; standards of performance for new stationary sources:
- Solid waste landfills that commenced construction prior to May 30, 1991 and have not been modified or reconstructed since May 30, 1991; comments due by 2-16-99; published 12-16-98

Air programs:
- Ambient air quality surveillance—
  - Washington and Oregon; ozone monitoring season modification; comments due by 2-19-99; published 1-20-99
  - Washington and Oregon; ozone monitoring season modification; comments due by 2-19-99; published 1-20-99

Air quality implementation plans; approval and promulgation; various States:
- Illinois; comments due by 2-16-99; published 1-15-99
- Louisiana; comments due by 2-16-99; published 1-14-99

Hazardous waste:
- Lead-based paint debris; toxicity characteristic rule; temporary suspension; comments due by 2-16-99; published 12-18-98

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Bifenthrin; comments due by 2-16-99; published 12-16-98
- Copper ammonium complex; comments due by 2-16-99; published 12-16-98
- Tralkoxydim; comments due by 2-16-99; published 12-16-98

Superfund program:
- National oil and hazardous substances contingency plan—
  - National priorities list update; comments due

by 2-16-99; published 12-17-98

Toxic substances:

Lead-based paint activities—

Lead-based paint debris; management and disposal; comments due by 2-16-99; published 12-18-98

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

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Frequency allocations and radio treaty matters:

3650-3700 MHz government transfer band; comments due by 2-16-99; published 1-14-99

Radio and television broadcasting:

Broadcast and cable equal employment opportunity rules and policies; revision; comments due by 2-18-99; published 1-14-99

Television broadcasting:

Digital television capacity by noncommercial licenses; ancillary or supplementary use; comments due by 2-16-99; published 2-11-99

FEDERAL EMERGENCY MANAGEMENT AGENCY

Preparedness:

Offsite radiological emergency preparedness program; services fee; comments due by 2-16-99; published 12-15-98

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Historically underutilized business zone (HUBZone) empowerment contracting program; comments due by 2-16-99; published 12-18-98

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food additives:

Adhesive coatings and components—

Silver chloride-coated titanium dioxide; comments due by 2-16-99; published 1-15-99

INTERIOR DEPARTMENT

Reclamation Bureau

Farm operations in excess of 960 acres, information requirements; and formerly excess land eligibility to receive non-full cost irrigation water; comments due by 2-18-99; published 1-19-99

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Surface coal mining and reclamation operations:

Ownership and control mining operations; definitions, permit requirements, enforcement actions, etc.; comments due by 2-19-99; published 12-21-98

JUSTICE DEPARTMENT

Prisons Bureau

Inmate control, custody, care, etc.:

Sex offender release notification; designation of offenses; comments due by 2-16-99; published 12-16-98

LABOR DEPARTMENT

Employment and Training Administration

Nonimmigrants on H-1B visas employed in specialty occupations and as fashion models; labor condition applications and employer requirements

Wage recordkeeping requirements; comments due by 2-19-99; published 2-5-99

LABOR DEPARTMENT

Mine Safety and Health Administration

Coal mine safety and health:

Underground mines—

Diesel particulate matter; occupational exposure; comments due by 2-16-99; published 10-19-98

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Historically underutilized business zone (HUBZone) empowerment contracting program; comments due by 2-16-99; published 12-18-98

SECURITIES AND EXCHANGE COMMISSION

Securities:

Cross-border tender offers, business combinations, and rights offerings; comments due by 2-16-99; published 12-15-98

STATE DEPARTMENT

Privacy Act; implementation; comments due by 2-16-99; published 1-6-99

TRANSPORTATION DEPARTMENT

Coast Guard

Boating safety:

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Recreational boats; hull identification numbers; comments due by 2-16-99; published 11-16-98

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airmen certification:

Aircraft dispatchers; eligibility and certification requirements; comments due by 2-16-99; published 10-19-98

Airworthiness directives:

Airbus; comments due by 2-18-99; published 1-19-99

Construcciones Aeronauticas, S.A.; comments due by 2-19-99; published 1-20-99

McCauley Propeller Systems; comments due by 2-16-99; published 12-18-98

Pratt & Whitney; comments due by 2-19-99; published 12-21-98

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Class E airspace; comments due by 2-17-99; published 1-25-99

TREASURY DEPARTMENT

Internal Revenue Service

Estate and gift taxes:

Marital deduction; valuation of interest in property passing to surviving spouse; public hearing; comments due by 2-16-99; published 12-16-98